



MINISTRY OF AGRICULTURE FISHERIES AND FOOD
DEPARTMENT OF AGRICULTURE FOR SCOTLAND
HOME OFFICE

Report of the
Committee of Investigation for
Great Britain
on complaints made by the
Country Wool Merchants Association
and the
Wool Federation of Scotland
against the Operation of the
British Wool Marketing Scheme,
1950

LONDON
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Committee of Investigation for Great Britain

Report on complaints made by the Country Wool Merchants Association and the Wool Federation of Scotland against the operation of the British Wool Marketing Scheme, 1950.

TO: THE RIGHT HONOURABLE JOHN HARE, O.B.E., M.P.,
Minister of Agriculture, Fisheries and Food.

THE RIGHT HONOURABLE JOHN S. MACLAY, C.M.G., M.P.,
Secretary of State for Scotland.

THE RIGHT HONOURABLE R. A. BUTLER, C.H., M.P.,
Secretary of State for the Home Department.

SIRS,

Part I—Introduction

1. We were directed on 7th March, 1957, to consider and report on complaints made by the Country Wool Merchants Association and the Wool Federation of Scotland against the operation of the British Wool Marketing Scheme, 1950. The complaints were set out in two letters dated 11th January, 1957, which are reproduced as documents 1 and 2 of Appendix I to this Report.

2. We were further directed, without prejudice to any other relevant matter on which we might wish to observe, to report:—

(a) whether any provision of the British Wool Marketing Scheme, 1950, or any act or omission of the British Wool Marketing Board, of which provision, act or omission complaint has been made in the letters of 11th January, 1957, is contrary to the interest of any persons affected by the Scheme;

(b) if the answer to (a) is affirmative, whether the provision, act or omission is not in the public interest.

3. One of our members, Mr. J. T. Corbett, has taken no part in this enquiry, since the firm in which he is a partner has business connections with at least one of the members of one of the complainant organisations.

4. As this is the first case which has been referred to a Committee of Investigation since before the war, we think it desirable to state that our functions derive from the Agricultural Marketing Acts, 1931–49, which also lay down the action the Minister can take on the basis of our Report. Our main duty in this enquiry is to consider and report on the complaints that are referred to us by the Ministers and if we find that any provision of a Scheme, or any act or omission of the Board administering a Scheme is contrary to the interest of any persons affected by the Scheme and is not in the public interest, then the Ministers have wide powers to remedy the matter. They may amend a Scheme or revoke it, or they may serve a direction on the Board concerned where it is within their power to rectify the matter. The general procedure under which we work is governed by Regulations⁽¹⁾ made by the Ministers under the Acts.

⁽¹⁾ The Agricultural Marketing (Committee of Investigation) Regulations, 1949 (S.I. 1949/2452).

5. We were informed that the complainants were two of the four organisations representing private wool merchants (as distinct from Co-operative Wool Societies) employed as the Board's agents.⁽¹⁾ The Country Wool Merchants Association claimed to represent 80 per cent. of the merchants in England; and the Wool Federation of Scotland claimed to represent the majority of Scottish merchants and one of the two merchants in Northern Ireland. The other organisations representing private merchants, the British Wool Federation and the Welsh Country Wool Merchants Association, asked for permission to be represented and, if necessary, heard at the enquiry, but we refused this request as we considered that our Regulations make no provision for evidence being tendered on behalf of persons other than the parties to the dispute. (We came to this conclusion reluctantly as we think it might have been helpful to us to have received evidence from other parties who had a direct interest in the matter but who were not parties to the complaint.) These two organisations were claimed by the complainant organisations to be in sympathy with the complaints, but no evidence was put before us to that effect at the hearing, nor were their representatives called by the complainants to give evidence on their behalf. The fifth organisation, the U.K. Co-operative Wool Federation, represents those Co-operative Wool Societies who act as the Board's agents, and a representative of the Federation was called by the Board and gave evidence in support of the Board's case.

6. We asked formally for further information about the complaints, both from the complainants and from the Board, and the parties also requested certain information from each other. These exchanges of letters and documents were not completed until 20th August last, and the relevant parts are reproduced in Appendix I. We were also furnished with copies of minutes of all meetings of the Joint Committee (see paras. 75-79 below) and of other meetings at which the matters in dispute were discussed, as well as with a large number of letters, memoranda, forms of contract and other data relative to the disputes. We have regarded all these as being merely part of the voluminous evidence submitted to us, and have not thought it necessary to attach any of them to our Report. (We submit separately copies of the proofs and other evidence put before us, together with a verbatim report of the proceedings, as we are not regarding this information as part of our Report.)

7. At a meeting on 6th June, 1957, we agreed that we could not, on the information then in our possession, make a full and proper Report, and we therefore agreed that the parties should be given leave to appear before us and to submit oral evidence. The Country Wool Merchants Association and the Wool Federation of Scotland were represented by Mr. G. R. F. Morris and Mr. Neil Butter, instructed by Messrs. C. G. Metson & Co. The British Wool Marketing Board were represented by Mr. B. J. M. MacKenna, Q.C., and Mr. D. A. Grant, instructed by Messrs. Ellis & Fairhairn.

8. We met to hear oral evidence on thirteen days between 19th September, 1957, and 9th January, 1958. Six witnesses gave evidence on behalf of the complainants, one of them being a "B" merchant (or sub-agent) who was called at our request for direct evidence from this type of merchant. Four

(1) The terms "merchants" and "merchant organisations" as used extensively in our Report refer to the Board's agents and their organisations.

witnesses gave evidence on behalf of the Board, one being the Board's Chairman⁽¹⁾, who was called at our request as we considered that we ought to hear from him as well as from the Board's Manager/Secretary. Details of the names and main qualifications of the witnesses are given in Appendix II. None of the witnesses was examined on oath. To expedite the hearing the parties were invited to supply in advance to the Committee, and to exchange, proofs of evidence of the several witnesses before their evidence was given and the witnesses were cross-examined.

9. In the hope of securing clearer identification of the matters under complaint, and of the remedial action which the complainants were striving for, their Counsel was requested by us on the opening of the second day of the hearing to submit a form of pleading setting out the heads of complaints, and also the recommendations that they desired us to make. Later on that same day he was able to read to us from a draft of such a statement, but it was not until the sixth day that we received the first written draft submission, defining the recommendations which the complainants desired us to make in our Report. The submission was later revised on two separate occasions, the final version being handed to us (without prior leave) on the eve of the last day but one of the hearing after Counsel for the Board had opened his final address to us. In this final form it is also reproduced in Appendix I to this Report. In his final address Counsel for the complainants apologised for the number of submissions that had been put before us by the complainants during the hearing.

10. By letter on 22nd August, 1957, the complainants asked that the hearing should be held in public as reference to the complaints had been made in the Public Press and in the Board's Annual Report. The Regulations governing our enquiry lay down the rule, however, that we should meet in private unless we determine otherwise in any particular case, and we decided to defer our decision until Counsel for both sides had made oral submissions on the matter. Counsel for the complainants supported the application on the grounds that the issue was one that concerned the industry as a whole and involved matters which were clearly in the public interest and that no fact or circumstances of a security or secret nature made the hearing different from any other enquiry. Counsel for the Board pointed out that the reasons given by the complainants did not amount to justification for treating this particular case as an exception from the rule laid down in the Regulations, and also urged that with a private hearing there was less likelihood of embarrassment if either party should wish to refer to facts and figures concerning individual firms. We were unanimously of opinion that there was no case for a departure from the general rule, and accordingly decided that the hearing be in private. In giving the decision of the Committee the Chairman said: "There will be a Report in due course and the Minister will decide whether it shall be

(1) Towards the end of the hearing, we were informed that there had been a change in the Chairmanship of the Board, but Counsel for the Board gave the assurance that this change had no effect on the matters before us, and that the attitude of the Board towards the complaints was unchanged. We were also told that the evidence of the previous Chairman (Mr. Ivor Morris) still stood, although it was not possible to say that the new Chairman (Mr. H. C. Falconer) would have given exactly the same answers as the witness on matters of future policy.

published. It is most likely to be and that, I think, will give sufficient information of the issues in this case, and the decision, and the reason for the decision".

11. In the course of the hearing we decided that it would be helpful in considering the issues before us if we were to have a view of the kind of business conducted by merchants acting as the Board's agents. We therefore invited both sides to co-operate in suggesting a short programme of visits, which we were able to complete before the hearing ended. On all our visits we were accompanied by representatives of both sides. Details of the firms which we visited are given in Appendix III to the Report. We found these visits most helpful, and we should like to express our appreciation of the courtesy and consideration with which we were treated.

12. We feel bound here to comment on a lack of precision on the part of the complainants in formulating their grievances and the remedies which they wished to propose. Our conduct of the hearing itself was further hampered by two circumstances, both of which had the effect of prolonging it. In the first place, as we have said, both sides were requested some time before the hearing was opened to submit proofs of evidence of witnesses. The complainants were at first unwilling to do so. In fact copies of their proofs of evidence were only received during the course of the hearing, and there was no proof at all for one of their chief witnesses, whose examination occupied a day and a half. Secondly, a formidable array of documents in the case, agreed between the two sides, was presented to us only on the opening of the first day of the hearing. It would have been of great assistance to us if we had had time beforehand in which to study these documents, and perhaps to discuss them among ourselves.

13. This is the first time a Committee of Investigation has been called upon to function since the Regulations under which we work were revised after the war and to some extent we have been obliged to work out our procedure as we went along. During the hearing it became clear that the existing arrangements for the presentation of complaints and the procedure before hearing were unsatisfactory in certain respects. We suggest that there may be a case for altering the Regulations under which we work.

Part II—The Complaints

14. The matters raised in the original letters of complaint of 11th January, 1957, were supplemented and to some extent modified by the complainants in their representations to us on 17th April, 1957, and 25th July, 1957, and during the course of the hearing. In order to clarify the issues before us, we have felt it necessary to attempt to define the specific matters complained of, and accordingly set out below an analysis of the original letters and of the subsequent representations and evidence in so far as these throw light on the subject matter in complaint.

LETTERS OF COMPLAINT DATED 11TH JANUARY, 1957

15. We have already indicated (in paragraph 9) that the original letters of complaint (docs. 1 and 2, Appendix I) were framed in very general terms. The letters do, however, make clear that there were two main

matters of complaint. The first was that, after the failure to reach agreement on certain major items in the Survey of merchants' costs that had been carried out at the Board's request, the Board had acted unilaterally in offering individual merchants, "in entire disregard of the wishes and contentions of the merchants", either a one-year contract subject to such terms as were alleged to make its acceptance tantamount to commercial suicide, or a five-year contract at rates representing a 10 per cent. reduction on existing rates of remuneration. The second complaint was at the absence from the Scheme of any right of appeal by merchants to arbitration if aggrieved at any act or omission of the Board. It can also be inferred from the letters that the complainant organisations' complained about the conduct of the Board during and after the negotiations on the agency contracts and about the actions of the Board over the conditions under which producers could change their merchant and the merchants could canvass against each other.

16. The complainants ended their letters by suggesting the terms of reference for this Committee, and these give a further indication of the matters complained of. A review by the Committee is suggested of the relations between the Board and the merchants for the purpose of defining the services to be rendered by the merchants and their sub-agents and the allowances to be made to them, the length of tenure of employment for the merchants, the scope of the Board's activities in themselves handling wool and the conditions upon which merchants may canvass and producers may change from one merchant to another. Finally the suggested terms of reference indicate the nature of the redress sought by the complainant organisations and suggest that the Committee should consider and make recommendations on the desirability of defining a formula upon which the rate of merchants' remuneration should be based and the desirability of an amendment to the Scheme to provide a right to arbitration for the merchants.

THE COMPLAINANTS' REPRESENTATIONS DATED 17TH APRIL, 1957

17. In their representations (doc. 4, Appendix I) the complainants did not attempt to define their complaints with greater precision, except to state an objection to any form of canvassing, but rather indicated in some detail their contentions under the various headings of their proposed terms of reference for this Committee. The document did, however, state that the complainants' accountants were engaged on drafting a formula, for consideration by the Committee, on which merchants' remuneration could be based. This formula was submitted to us on 3rd July, 1957, and is reproduced as doc. 6 of Appendix I. We mention the formula here only to dismiss it as the complainants did not follow it up before us during the hearing.

THE COMPLAINANTS' FURTHER PARTICULARS OF COMPLAINTS DATED 25TH JULY, 1957

18. In their letter of 25th July, 1957 (doc. 7, Appendix I) the complainants gave further particulars concerning a number of matters referred to in their original letters of complaint. In this letter, the complainants confirmed the existence of unresolved disputes (and it is inferred complaints)

over the offer of the two-tier contract, over producers' freedom of choice of merchant, and over freedom of merchants to canvass. In addition, it was stated specifically for the first time that the Board decided unilaterally that the Cost Survey of merchants' costs could not be used as originally intended and that the Board ultimately ignored the results of the Cost Survey.

19. In this document complaint was also made for the first time of the way in which the Board had disregarded the recommendations of the Joint Committee (constituted under para. 33 of the Scheme) on the three occasions that were cited. Although the actions of the Board in this respect were mentioned in the letters of 11th January, 1957, the reference there forms part of the complainants' argument that the Joint Committee is not an effective method of settling disputes between the merchant organisations and the Board, but it was also their view that the Joint Committee served a useful purpose and they said that they did not suggest that its constitution should be amended. We have not, therefore, regarded the issue as a separate matter of complaint but rather as a matter that contributed to the deterioration in the relations between the complainants and the Board.

20. One of the three disputes on the Joint Committee related to a proposal by the Board to start an experimental handling unit at Oak Mills, and it was implied in the letter of 25th July, 1957, that objection was taken to the persistence of the Board in carrying out this proposal. On the other hand, in the earlier letter of 17th April, 1957, the suggestion appeared to be that the running of an experimental unit should be within the defined scope of the services to be rendered by the Board, though nothing beyond that should be contemplated.

MODIFICATION OF THE COMPLAINTS DURING THE HEARING

21. On the second day of the hearing, at our request Counsel for the complainants addressed us on the heads of the recommendations which the complainants desired us to make. He redefined the recommendations sought as being:—

- (1) that the following amendment should be made to the Scheme—
“any body of merchants belonging to an organisation represented on the Joint Committee which is aggrieved by an act of omission or commission of the Board may refer the matter to the arbitration of a single arbitrator to be agreed between the association and the Board or in the default of agreement to be appointed by the Minister on the application of either party and the arbitrator may make such order in the matter as he thinks proper”; and
- (2) that the terms relating to remuneration contained in the current contracts between the Board and the merchants should be submitted to arbitration.

In this way, Counsel for the complainants said that the various matters in the terms of reference set out in the penultimate paragraph of the letters of 11th January, 1957, would be dealt with as part of the contractual document, the terms of which would be subject to arbitration; and that, while not dropping the item relating to change of merchant and canvassing, he was expecting this item to be covered under the terms of an expanded

agency agreement. He added that everything in sub-paragraph (b) of the letters relating to the definition of a remuneration formula was really deleted if the existing dispute in respect of the 1955 contract remuneration was determined by arbitration, and that sub-paragraph (c) no longer applied since he had proposed the revision of the recommendations sought.

22. On the sixth day of the hearing, Counsel for the complainants put in a submission in writing. This first referred to the act of the Board which was said to be contrary to the interests of members of the complainant organisations and not in the public interest as being the offer of the alternative forms of contracts not approved by the complainant organisations on behalf of their members. It then set out the recommendations which the complainants wished us to make, and followed the form outlined by Counsel on the second day of the hearing but included a new section proposing an amendment of the Scheme to provide machinery, on the lines of that operating under wartime control, for deciding on producers' applications for change of merchants where there was objection by the merchant who would lose the clips. It was also stated that a direction to the Board was sought to require the review of the remuneration terms of the current contracts with effect from 1st May, 1957, and the reference of the matter to arbitration if no agreement was reached.

23. On this day Counsel for the complainants again confirmed that we were not now being asked to make a recommendation, as part of the redress sought, in respect of the formula on which merchants' remuneration should be based. While this had been the complainants' original intention, they were dropping the matter now that it was proposed that the remuneration rate under the current contract should be reviewed and subject to arbitration if no agreement was reached, but that they might raise it in the course of discussion on the proposed review. However, in the adjournment before the opening of the eleventh day of the hearing, the complainants sent us the second version of their submission in which they invited us to recommend that a direction should be served on the Board to the effect that the rate of the remuneration should be fixed at a certain specified figure for the last three years of the term of the contract. Counsel for the complainants explained on the eleventh day of the hearing that the suggestion had been made for us to determine the rate of remuneration because it had occurred to the complainants that we had received sufficient material to discharge the function that had been proposed for the reference to arbitration. This suggestion had not occurred in the letters of complaint dated 11th January, 1957, or subsequent documents, and was now made formally for the first time, and we told the complainants that in the circumstances we were not prepared to entertain it.

FINAL SUBMISSION AND ADDRESS BY THE COMPLAINANTS' COUNSEL

24. The complainants' third and final submission (doc. 10, Appendix D) was put before us by the complainants' Counsel on the eve of the last day but one of the hearing. It was similar in form and content to the submission put to us on the sixth day (see paragraph 22 above) but there was one important addition. This was the inclusion of a further item in the first

part of the submission to the effect that we should find that the conduct of the Board as set out in the letters of complaint dated 11th January, 1957, and particularised in the letter of 25th July, 1957, was contrary to the interests of members of the complainant organisations and not in the public interest.

25. In his final address, Counsel for the complainants explained that his clients had not abandoned or modified any of the original matters mentioned in the letters of 11th January, 1957, and in the further particulars given later. He said, however, that the complainants did take the view that certain matters, such as the Oak Mills affair, had rather lost their impact, and that the real dispute was in relation to change of merchant, arbitration machinery and the terms of remuneration in the contract.

THE COMMITTEE'S DEFINITION OF THE COMPLAINTS

26. In his final address Counsel for the complainants also suggested to us that, rather than make findings on a number of acts or omissions of the Board, it would be a better way for us to deal with them if we regarded the acts or omissions as part of a course of conduct of which each separate act formed steps progressively along the same road, and then to ask the question whether or not that course deliberately and systematically pursued had the effect of producing a situation contrary to the interests of the merchants and contrary to the public interest. In a sense, we were being asked to consider whether the position which the Board occupies *vis-à-vis* that of the merchants invites an abuse of power which the Board did not adequately resist. We have kept in mind, in arriving at our conclusions, the concept of such a general background complaint and we deal specifically with it in Part VI of our Report. But we have also to answer the particular questions in our terms of reference and this involves looking individually at the alleged acts and omissions of the Board. We have taken these to be:

- (1) The alleged arbitrary conduct of the Board during and after the negotiations on the contract, and in particular their action in offering to individual merchants, contrary to the wishes and contentions of the complainant organisations, either a one-year contract subject to such terms as were alleged to make its acceptance tantamount to commercial suicide, or a five-year contract at rates representing a 10 per cent. reduction on existing rates of remuneration.
- (2) The granting of greater freedom for producers to change their merchant and the removal of the ban on canvassing by merchants.
- (3) The act of the Board in setting up an experimental handling unit at Oak Mills, Bradford, contrary to the recommendations of the trade members on the Joint Committee.

We deal with these three items in Part V, Sections (A), (B) and (C).

27. The redress sought by the complainants has been stated in their third and final submission (doc. 10, Appendix I). It includes (i) a right to arbitration on the remuneration rate in the current contract as from 1st May, 1957, and on any future disputes between them and the Board; and (ii) the introduction of appeal machinery for deciding on disputed applications by producers for authority to change their merchant.

28. During the hearing we tried to obtain from the chief witnesses for the complainant organisations an indication of the kind of topics which they might wish to refer to arbitration in the event of a dispute. It seemed a matter of some importance that we should be given a clear view of the manner in which disputes over questions other than scales of remuneration would be presented for arbitration and of the criteria which an arbitrator would apply, or would be expected to apply, to them. However, in spite of repeated questioning, we were unable to obtain from the witnesses any definite statements of what they had in mind apart from the right of appeal in the event of any dispute affecting their status, conditions of employment and matters of remuneration. They did, however, make it clear that they foresaw the need for the right to arbitration in the event of any fresh dispute which might arise if the Board wished to expand their own handling activities. They appeared to contemplate that any such dispute would be covered in their proposed provision for arbitration and that no specific restriction of the Board's power (under paragraph 73 (1) (a) of the Scheme) was called for.

29. It is also relevant to mention that during cross-examination of the Board's witnesses and in his closing speech, Counsel for the complainants sought to show that any such provision for arbitration as proposed would not conflict with the Board's actions in the field of policy. He maintained that there was a clear distinction between the formulation of policy and acts or omissions in respect of the implementation of policy decisions, and that the complainant organisations were seeking the right to arbitration only over acts or omissions which affected the interests of their members. While we have considered this argument, we cannot agree that the distinction is a real one; if an arbitrator can prevent or undo actions arising out of a policy, he is thereby given the right to affect policy (see para. 180).

Part III—General Submissions by Counsel

30. Before turning to consideration of the complaints, it may be convenient to refer to certain submissions made to us by Counsel on both sides concerning the scope and interpretation of Section 9 (5) of the Agricultural Marketing Act, 1931, and of certain parts of our terms of reference, and the statutory authority for arbitration for persons other than registered producers.

INTENTION OF SECTION 9 (5) OF THE 1931 ACT

31. Counsel for the Board argued that the Minister's powers to take action under this subsection following a complaint about a provision of a scheme, or an act or omission of the Board, were limited in important respects. First, the Minister could act only if a Committee of Investigation found that there was a legitimate matter of complaint; and secondly the Minister had no power to amend a scheme in any way that was not authorised by the Acts. He urged that it was the duty of the complainant to make clear to the Committee what he was asking them to find objectionable, either the provision of the scheme which operated against his interests or the act of the Board which had a similar effect, and that if the complainant asked the Committee to recommend action by the Minister to remedy that matter then he should

ensure that the action recommended was appropriate to rectify the matter. Where in the course of a hearing before the Committee a complainant had defined in some way the matters complained of and omitted reference to items that had been included in his original complaint to the Minister, then the Committee had no duty to report on the items that had been omitted but should simply state in their Report that the complaint in respect of these items had been dropped. In contrast he saw no objection to the Committee making general observations in the course of dealing with the matters on which they were asked by the complainants to make a finding. In the second version of their pleading (which was the current version at that time) the complainants had mentioned as a matter of complaint only the offer direct to merchants of alternative forms of contract containing terms not approved by the complainant organisations. Counsel for the Board argued that we should regard this as the complete and final version of the matter complained of and refrain from making findings on any other matters.

32. As we have stated above (para. 23), this submission was amended a second time. It was afterwards explained on behalf of the complainants that it was not their intention to resile from or modify or abandon any complaint which they had made. They had simply sought to crystallise and emphasise the three major matters likely to affect the relations between the Board and the merchant organisations in the future, namely change of merchant, the need for arbitration machinery and resolution of the dispute on the rates of remuneration.

33. While we accept the explanation given by Counsel for the complainants, we think that it was unfortunate that the complainants should have produced documents which, albeit inadvertently, did not cover fully the matters which they desired us to report on. We appreciate that as a result the Board may have been misled into thinking that they had to answer only the items that remained. We are of opinion, however, that neither the Acts, the Statutory Regulations nor the directions which we have received require us to limit our findings exclusively to the matters contained in the complainants' form of pleading and that our task is to consider and report on the matters included in the letters of complaint referred to us, although we should naturally have to take note of any statement made by the complainants that particular matters were no longer the subject of current complaint. We conveyed this view to Counsel for the Board in the course of his final speech, and he was accordingly able to address us on wider issues than he had intended to do originally on the basis of the second version of the complainants' pleading. Although the misunderstanding has been cleared up in this way we think it right to state our view that we are free to make such findings as we think proper, in the light of the oral and written evidence put before us on the basis of the complaints originally referred to us.

THE INTERPRETATION OF CERTAIN PARTS OF OUR TERMS OF REFERENCE

34. The expression "*contrary to the interest of any persons affected by the Scheme*" (see para. 2 (a) of this Report). Counsel for the Board reminded us that the meaning of this expression had been considered by the Committee

of Investigation, presided over by Mr. Whitehead, which investigated complaints about the Milk Marketing Scheme and reported in 1936. In their Report they said:

"Unless some qualification such as 'reasonable and proper' is implied, any action which had the effect, for example, of increasing the price to be paid by the complainants would obviously be contrary to their interests, and on that issue there would be nothing to inquire into."⁽¹⁾ Counsel for the Board invited us to introduce a similar qualification in the present case. Counsel for the complainants did not dissent. We agree with the views expressed on the matter by the Whitehead Committee and we have regarded the word "interest" as being qualified by the word "reasonable" when answering para. (a) of our terms of reference.

35. The expression "*not in the public interest*" (see para. 2 (b) of this Report). Counsel for the Board invited us to accept the comprehensive interpretation which was placed on these words in the Report of the Whitehead Committee.⁽²⁾ Counsel for the complainants did not dissent from this view. We accept the interpretation of the Whitehead Committee, and in particular draw attention to their suggestion that:

"the word 'public' should be given a comprehensive interpretation. For example, if a particular act was found to be in the interest of a substantial part of the public, it need not be shown that it is in everybody's interest. Also, an act would be in the public interest if shown to be in the interest of a substantial majority of the public, notwithstanding the fact that it might be contrary to the interest of some section of the public". In addition to the precedent from the Report of our predecessors, we have had regard, where appropriate, to the definition of public interest incorporated in Section 14 of the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, to the way in which the definition has been interpreted by the Monopolies Commission in its published Reports, and to Section 21 of the Restrictive Trade Practices Act, 1956.

36. The Whitehead Committee also took the view "that to prove that an act is not in the public interest is a different thing from having to prove that it is contrary to the public interest." Counsel for the Board made no submission against this interpretation, which he said he was quite happy to accept. Counsel for the complainants, while welcoming the view expressed by the Whitehead Committee, was not content, when it came to the point, to argue merely that the acts which on his submission were contrary to the interests of the complainants were not in the public interest, but submitted that they were positively contrary to it.

ARBITRATION FOR PERSONS OTHER THAN REGISTERED PRODUCERS

37. Counsel for the Board pointed out that the Marketing Acts required specific provision to be made in each marketing scheme for arbitration for registered producers. No reference was made to arbitration for other persons and any such provision in a scheme would have to be justified by some

⁽¹⁾ Report of the Committee of Investigation for England on Complaints made by the Central Milk Distributive Committee and the Parliamentary Committee of the Co-operative Congress as to the operation of the Milk Marketing Scheme, 1933 (1936), p. 5.

⁽²⁾ p. 6.

other provision in the statute than that which directs the insertion of the provision for producers. He contended that such a provision for merchants would be *ultra vires* the Acts. He suggested that the only section that could be prayed in aid was Section 6 (2) of the 1931 Act, which states: "Every scheme may further provide for such matters as are incidental to or consequential on the provisions of this Act relating to the contents of schemes or are necessary for giving effect to those provisions". He did not allow that this provision provided the necessary authority since the Acts themselves provide for schemes which empower marketing boards to market a product and not for schemes which provide for boards to be controlled by the decisions of an arbitrator. He fortified his submission by reference to other provisions of the Acts. First, Section 13 (1) of the 1933 Act provides for a board to be given power to negotiate with other persons and to agree to bring into consultation a third party in case of disagreement; and he suggested that it would have been surprising if Parliament had thought it necessary to enact Section 13 (1), if Section 6 (2) of the 1931 Act would enable provisions to be written into a scheme for binding arbitration as proposed by the complainants. Secondly, he argued that Section 9 of the 1931 Act provided for the Committee of Investigation as part of the machinery for rectifying complaints concerning the operation of schemes and that arbitration as proposed would really deprive Section 9 of any sensible content.

38. Counsel for the complainants contended that Section 6 (2) of the 1931 Act provided necessary statutory authority for this kind of arbitration in cases where agents were envisaged in a scheme and were an essential part of the marketing arrangements operated by the Board. He referred to Sections 5 (b) and 5 (f) of the 1931 Act as contemplating the employment of agents under a scheme and urged that the wool merchants acting as the Board's agents were an essential ingredient of the Scheme. In his argument Section 6 (2) of the 1931 Act therefore provided the authority required for machinery of the kind proposed to be written into the Wool Scheme for determining differences between the Board and their agents over their terms of employment and other relevant matters. The alternative was the sanction of necessity, and he maintained that this could not properly be applied to oblige an agent to accept whatever terms the Board thought fit. To reinforce his views he relied on the provisions of paragraph 77 of the British Egg Marketing Scheme, 1956, which provide full arbitration for egg packing stations acting as agents of the Egg Board; and he did not agree that subpara. (7) was so framed as to exempt the Board from the general requirement of the Arbitration Act, 1950, which rendered any award binding on both parties. Counsel's case was that if the Minister had the power to make provision for full arbitration for egg packers, he could provide the same thing for the wool merchants who wanted similar rights.

39. From our reading of the relevant provisions of the Acts we incline to the view that arbitration of the kind sought could not be written into a scheme and we understand that paragraph 77 of the British Egg Marketing Scheme, and equally paragraph 68 of that Scheme, are so framed as to exempt the Board from the obligation to accept the arbitrator's award as binding. As will be seen (paras. 180-182) we have not found it necessary to reach a final view on this issue since our conclusion is that arbitration as sought by the complainants would not be justified on the merits of the case as presented to us or provide an appropriate remedy.

Part IV—Historical and Factual Background

40. We think it is appropriate to consider the complaints against the background of the relevant events of recent history of wool marketing and to summarise the factual material relating to the disputes. We accordingly set out in this part of our Report the factual background against which we have considered the complaints. For the most part this is based on material submitted to us in evidence, but it has been supplemented from factual information prepared for us at our request by officials of your Departments.

PRE-WAR METHODS OF MARKETING

41. Before the war the annual average wool production in the United Kingdom was in the region of 105 million lbs., about two-thirds of which was fleece wool and the balance fell-mongered or skin wool, i.e. removed from sheep or lamb skins. (We are concerned in this Report only with fleece wool, since the Board's regulatory powers are confined to the marketing of fleece wool, which still represents about two-thirds of the United Kingdom wool production.)

42. Whilst a small proportion of fleece wool produced in the United Kingdom was sold by producers direct to manufacturers, the great bulk of home-grown wool was sold by producers to one or other of three different types of wool merchant—

- (i) those who sold to other merchants without grading;
- (ii) those who graded the wools and sold to other merchants but not to users; and
- (iii) those who bought both from producers and from other merchants, graded the wools and sold direct to manufacturers.

In 1939 there were in England and Wales 153 merchant firms as in (i) above and 126 as in (ii) and (iii). Many merchants employed agents to collect on their behalf from producers, the number employed being not far short of 1,000.

43. Owing to its greater uniformity, possibly 75 per cent. of the wool produced in Scotland could be sold to manufacturers in the ungraded state; there were 31 merchants operating in Scotland and many of these merchants also employed collecting agents.

44. Merchants canvassed producers for their wool clips, and there was competition in the prices offered to producers. According to the evidence, the prices offered did not normally vary by more than $\frac{1}{2}$ d. to $\frac{1}{4}$ d. per lb. In many cases the purchase of a producer's wool might be part of a business transaction between the producer and the merchant in which the merchant accepted a producer's wool in part payment for farm requisites, e.g. seeds or fertilisers, the sale of which was often part of the merchant's business.

45. There were about 400 grades of home-grown wool, so that grading was a complex operation. This was due, not only to the large number of different breeds of sheep and to the variation between fleeces of the same breed, but also to the large number of local grades in use at that time.

The quality of British wool was relatively low compared with its imported equivalent. (We think it relevant to note that, according to information put before us, the status of British wool has improved under organised marketing and it now realises better prices than its overseas equivalent.)

WAR-TIME AND IMMEDIATE POST-WAR MARKETING ARRANGEMENTS

46. During the war years and up to 1950 the Government was responsible, through the Wool Control, for the purchase and marketing of the United Kingdom wool clip. The procedure followed was based on freezing the pre-war pattern of trade, but with the basic difference that merchants ceased to trade as principals. The actual collection of wool was entrusted to the merchants of pre-war standing, each firm being authorised to collect from specified producers. Generally the producer was linked with the merchant who purchased his wool in pre-war years, but in some instances changes were necessary, e.g. where maintenance of the pre-war connection involved unnecessary transport. To maintain the pre-war pattern, producers were prevented from changing from one merchant to another and canvassing for custom by merchants was prohibited.

47. The Wool Control recognised three types of merchants: the "A" merchant, who himself collected a high proportion of the clip and who also accepted wool collected by "B" or "C" merchants; the "B" merchant, who usually had transport and storage facilities but was not a grader and who collected the wool either from the farm or through the "C" merchant and sent it to the "A" merchant; and the "C" merchant, who was purely a collector with no premises or transport and sent the wool collected to the "A" or "B" merchant. The "A" merchant was responsible for grading the wool and for storing it until instructions for disposal were given by Wool Control.

48. The "A" merchant paid the producer for the value of his clip and received reimbursement from the Wool Control. For his services he received a commission. This covered the cost of providing bags or sheets in which the wool was packed, transport to the warehouse, storage of the wool while in the warehouse, interest on the capital required to finance payments to producers, and an allowance calculated to give the merchant a reasonable return for the work and specialised knowledge expended in grading and valuing and for his services generally (the grading during this period was gradually brought on to a national standard basis so that the number of grades of wool eventually was reduced to about 250). In Scotland the procedure differed in that wool was valued not by the merchants but by qualified staff directly employed by the Wool Control.

49. The cost to a merchant of handling wool varies per pound of wool handled according to the type and grade of the wool. For example one important source of variation lies in the average weight of the fleece, which for some breeds of sheep is as much as three times as great as for others. These variations were allowed for in remuneration schedules attached to the contract, setting out the fees to be paid to merchants for handling the various types of wool (see paras. 68-70).

50. If a producer was not satisfied with the price offered by the merchant he could appeal for a further valuation to the appropriate area tribunal established by the Control. The tribunals comprised three producers nominated by the Farmers' Unions and three merchants nominated by their trade organisations. The Area Officer of Wool Control acted as Chairman but took no part in the discussions and did not vote. These committees also considered and advised on applications from producers for a change of merchant. They were advisory committees with no executive functions and the Agricultural Departments, to whom there was a right of appeal, could overrule the decisions of the committees.

BRITISH WOOL MARKETING BOARD

51. In October, 1949, a draft British Wool Marketing Scheme was submitted by the National Farmers' Unions of England and Wales and of Scotland and the Ulster Farmers' Union. A public inquiry into objections lodged against the Scheme was held and our attention was called by one of the complainants' witnesses to the attitude taken up on behalf of the promoters at the inquiry on the subject of the security which the Board would give to merchants. It is proper to record that the representative of the promoters, Mr. Falconer (who is at present the Chairman of the Board), maintained in response to questions put on behalf of the Scottish Federation and on behalf of the Welsh Agricultural Organisation Society and the Co-operative Wool Federation of Great Britain, that the Board hoped to continue to work with the merchants, as far as was possible consistent with efficiency, as the Wool Control had done, except that perhaps by rationalising transport they could save money for the producer. To questions put on behalf of the Welsh Agricultural Organisation Society and the Co-operative Wool Federation of Great Britain, Mr. Falconer, on behalf of the promoters, replied to the effect that the Board would never agree to freedom for producers to change their merchants because the system of registration and notification would not give the Board sufficient information and control over the channels of disposal of producers' clips, since all producers could not be relied upon to notify their choice to the Board.

52. On 7th August, 1950, the Scheme came into force. At the initial poll on whether the Scheme should remain in force 94.3 per cent. of the producers in the poll, representing 93.5 per cent. of the productive capacity of those voting, voted for a continuance of the Scheme, which became fully operative on 16th October, 1950. At the same time an Order was made under Section 6 of the Agriculture Act, 1947, adding wool to the list of commodities for which provision was made in Part I of the Act for guaranteeing prices and assuring markets.

53. The main provisions of the Scheme, which regulates the marketing of fleece wool produced in the United Kingdom (except the County of Zetland), are as follows:

- (i) There is a Board consisting of ten regional members elected regionally by registered producers, two special members elected by producers from the country as a whole, and three members appointed by Ministers; the Chairman and Vice-Chairman are appointed annually

by the Board from within this number. In practice the two special members have always been merchants; at the present time one is a private "A" merchant and the other is a Director of a Scottish Co-operative firm of wool merchants. One of the three members appointed by Ministers is a Chartered Accountant, one is Professor of Government at Manchester University and we understand that at present there is a vacancy.

- (ii) There is an advisory committee known as the Joint Committee, which represents the views of the persons concerned with the marketing, processing and manufacture of wool. It must meet at least four times a year and must be consulted by the Board on "any major change of principle in the handling or marketing of wool". The provision dealing with the Joint Committee was settled between the merchant organisations and the promoters during the public inquiry but it is noteworthy that it makes no specific mention of merchants.
- (iii) All producers, except those with very small flocks⁽¹⁾, who wish to sell their wool must register with the Board. Unless otherwise exempted, all registered producers may be required to sell only to or through the agency of the Board and the Board must accept all wool duly tendered by registered producers. The Board must publish schedules of maximum prices and cause the producers' wool to be valued as soon as practicable after it has been tendered.
- (iv) Under the heading "Miscellaneous Powers", the Board are given general powers to buy, sell, grade, pack, store, adapt for sale, insure, advertise and transport wool.

In practice the Board elected to become the sole buyers of all fleece wool produced in the United Kingdom. They took over responsibility for the 1950-51 wool clip and for the arrangements already made by the Wool Control for its collection and marketing.

GUARANTEE ARRANGEMENTS

54. The Government guarantee arrangements for wool are implemented through the Board under the terms of a Financial Agreement with Agricultural Ministers. The first Agreement was made retrospective so as to include the 1950-51 wool clip, and covered a five-year period to 30th April, 1955. During this period, a guaranteed average price per pound was determined for fleece wool at each Annual Review, for the twelve months commencing the following 1st May, and the Board were required to pay this price on average to producers for all wool tendered in that year. Ministers also determined an average allowance per pound of wool to cover the Board's marketing expenses including the merchants' remuneration. The arrangement was that, if the proceeds from the sale of wool by the Board, together with any balance from previous years, were insufficient to cover the guaranteed average price to the producers plus the allowance for marketing, the balance would be paid by the Government. In practice the Board exceeded the marketing allowance in each of the first three years, and in August, 1952, sought an increase: ultimately increased allowances were allowed for the 1953 and 1954 clips.

⁽¹⁾ A producer is exempt from registration if he has not had in his possession more than four sheep, aged over four months, at any time either in the current or in the preceding calendar year.

55. At the end of the five-year period proposals for changes in the guarantee were discussed between the Agricultural Departments, the National Farmers' Unions and the Board, and a new Financial Agreement was negotiated. This provided *inter alia* that the arrangements should be deemed to operate for a maximum period of 15 years from 1st May, 1950, and that the guaranteed price should be inclusive instead of exclusive of marketing expenses and should be guaranteed to the Board on behalf of producers, instead of to producers collectively as before.

56. The Board, in a policy memorandum issued to the merchants in January, 1953, extracts from which are given in para. 84, had outlined the measures which they intended to take in carrying out their duty of administering the Wool Scheme with efficiency and economy; and in the field of procurement had stated that their primary aim was such cost reductions as could be obtained without loss of efficiency. The new guarantee arrangements were, we understand, expected by the Government to give the Board an even greater incentive to keep down marketing expenses and so obtain the best possible return for producers.

57. The size of the clip, guaranteed price, merchants' remuneration and realised price for each year 1950-51 to 1956-57 are shown at Table I of Appendix IV. It will be seen that the price has risen from 30·8d. per lb. (27·05d. plus a marketing allowance of 3·75d. per lb.) to 56·25d. per lb. (inclusive of marketing allowance); that the merchants' basic rate of remuneration has been increased only once during this time (in the year 1951-52); that the actual rates received by merchants have varied very little; and that owing to the very large surplus made in the year of the Korean war, there had been no call upon the Exchequer to make good the losses in each year, until 1956.

58. The statutory basis of the guarantee arrangements is to be found in the British Wool (Guaranteed Prices) Order, 1955 (S.I. 1955/487). This Order revoked the British Wool (Guaranteed Prices) Order, 1951 (S.I. 1951/744), which related to the earlier guarantee arrangements.

THE BOARD'S MARKETING ARRANGEMENTS

59. At a meeting of the Joint Committee on 30th January, 1951, it was agreed with the merchants' representatives that the Board should employ as their agents only the "A" merchants, i.e. those merchants whose responsibilities under Government control are described at paragraph 48 above. This arrangement was designed to simplify control and to adapt the marketing organisation already in existence to the needs of a producers' Marketing Board. It was not considered necessary for the Board themselves to employ "B" and "C" merchants; but the "A" merchants were permitted to employ such sub-agents as they wished to assist them in the collection of wool, subject to the approval of the Board. There were, in 1954, 635 "B" and "C" merchants employed as sub-agents by 73 "A" merchants. (The numbers have since been reduced and we are advised that in 1957 there were 209 "B" merchants and 235 "C" merchants, plus three additional merchants who come into each category.)

60. The numbers of "A" merchants employed by the Board in 1956 and the approximate weight of wool handled by them is given at Table II of

Appendix IV, which shows also the numbers affiliated to the five merchant organisations. The location of "A" merchants by regions for the wool year 1956-57 is given at Table III of this Appendix, and Table IV shows the numbers of registered producers and agents in each wool year since the Board came into operation.

61. The majority of the "A" merchants are engaged in other business besides that of handling wool for the Board. The only figures given us were for the year 1954, when, of a total of 120 "A" merchants, 68 were engaged in other wool business, i.e. trading in wool after the auction stage, 24 were agricultural merchants, seedsmen, livestock auctioneers, etc., and only 28 had little or no other business. In referring to these three classes of merchants in our Report we have used the expressions "dual wool firms", "dual agricultural firms", and "single firms" respectively.

62. The "A" merchants undertook year by year to act as agents for the Board. A census of wool on the sheep was taken each year as near to 1st May as possible and the wool in respect of each producer allocated to a particular merchant. Except in very special circumstances the allocation during the first five years of the Board's operations was made to the merchant who handled the producer's wool in the previous season and the merchant was not free to canvass for a producer's clip.

63. Under the system of collection of wool through merchants, the merchant in England and Wales and Northern Ireland is responsible for handling all the wool allocated to him by the Board and for providing the producer with an adequate supply of bags or sheets and string for the proper despatch of the wool to his premises. The wool year runs from 1st May to 30th April, and the peak of the season for collection of wool is generally from June to September of each year. Time of delivery is at the producer's option; but to encourage producers to spread their deliveries over a longer period interest is allowed in respect of wool delivered between 1st September and the following 31st January. In practice, however, the trade is highly seasonal, and witnesses for the complainants argued that the Board ought to do more than is now done to persuade farmers to spread their deliveries. We were informed that the Board had the matter under consideration.

64. The merchant weighs, grades and values the wool in accordance with the Board's schedule of prices, which gives a maximum price payable for each of approximately 250 grades of wool. Appropriate deductions are made for wool which is not up to the full standard of the grade and the reasons for the deductions recorded on the invoice prepared by the merchant and sent by him to the producer with payment of the amount due. In Scotland, owing to the different characteristics of Scottish wool, approximately three-fifths of the clip is sold intact, i.e. not graded or sorted. All Scottish wools are valued by the Board's appraisers.

65. In the event of a dispute arising between a producer and a merchant as to the weight or grading of wool delivered, paragraph 72 (6) of the Scheme provides that the case may be heard by an appeal tribunal representing the National Farmers' Union, the merchants and the Board. Appeals are heard in London by a tribunal of five persons. We were told in evidence that there are very few appeals.

66. After completion of the grading, valuation and checking of wool, and payment to the producer, the merchant continues to hold the wool in storage at the Board's orders. A significant proportion of the clip may have to be stored beyond the end of the calendar year. All wool bought by the Board is sold at auction; British wool auctions are held at eight centres in the United Kingdom and the sales programme extends over eleven months of the year. The Board employ two organisations of selling brokers for this purpose.

67. The Board employ a staff of appraisers who visit merchants' premises to check that the wool is being correctly graded, and who may authorise sorting allowances for wool containing extraneous matter. Within two weeks of payment by the merchant to the producer the merchant is reimbursed by the Board. A payment of his remuneration is also made. Remuneration covers the following services :—

- (a) carriage inwards ;
- (b) handling into store, grading and checking after appraisal ;
- (c) use of sheets and carriage of sheets to producers ;
- (d) storage to 30th April (in respect of each clip year) ;
- (e) handling out to ultimate buyer ;
- (f) administration and clerical expenses in paying producers ;
- (g) interest on capital ;
- (h) profit margin.

68. During the relevant period the Board continued to base their remuneration of merchants on the schedules in use during control (see para. 49 above). For England, Wales and Northern Ireland the grades of wool are grouped into six schedules and the rate of remuneration per pound is laid down for each schedule, at two different figures according to whether the wool is washed or greasy. For Scotland the main distinctions turn on whether the clip is sold intact or not, and if it is graded on whether it is washed or greasy, while there are separate rates for the Orkneys and the Hebrides.

69. The outcome in any particular wool year of the operation of the schedules is a weighted average rate of remuneration paid by the Board to the "A" merchants for the United Kingdom as a whole. In this Report repeated reference is made to the "average rate of remuneration" (sometimes described as the "basic remuneration rate"). In arriving at it, the weights which are applied are, however, those defining the average of the composition of the United Kingdom clip in the years 1952 and 1953 rather than in the particular year in question. But the distinction is not material. During the period covered by our Report there has been no change of substance, apart from the treatment of daggings⁽¹⁾, in the relative rates per pound determined under the different schedules, and when reference is made to a reduction of, e.g. 10 per cent. in the average rate of remuneration it means

⁽¹⁾ The actual rate for handling daggings (i.e. wool naturally clotted with dung or earth) was increased from $\frac{3}{4}$ d. to $1\frac{1}{4}$ d. per lb., giving an average increase in the basic rate of remuneration of 0.6 per cent.

in effect a reduction by that amount in each of the individual rates applicable to the various schedules.

70. It is important to realise that the remuneration schedules are designed to cover those differences, but only those differences, in the cost per pound of handling wool which are associated with differences in the type and grade of the wool. In so far as the schedules are correctly calculated, one "A" merchant should not make a larger profit per pound on the wool collected for the Board than another "A" merchant merely because the wool is of a different type or grade. The schedules are not intended to deal with other differences in the cost of handling the wool. In particular, the profits of different "A" merchants on the work which they carry out as agents for the Board will differ:—

- (1) because some are more efficient than others (such differences in efficiency may be partly the result of some merchants operating on a larger scale than others);
- (2) because in working as agents for the Board some "A" merchants make less use than others do of "B" merchants, acting as sub-agents, and many "A" merchants do not employ "B" merchants at all;
- (3) because the cost per pound of handling wool depends not only on its type and grade but also on other characteristics. For example, an "A" merchant who collects wool from farmers whose clips are on the whole relatively small, or whose farms are relatively distant from the merchant's store, will for such reason tend to make a smaller profit per pound of wool which he collects for the Board. To some extent such differences are regional in character, farms tending to carry smaller flocks, and to be scattered more widely, in some regions than in others. Under the arrangements made by the Board for remunerating "A" merchants, except in certain special circumstances no provision is made for differences of that kind in the cost of collecting the wool for the Board;
- (4) because some by tradition perform additional services for the farmer—in Devon and Cornwall it has always been the custom for wool to be weighed and packed on the farm, and this practice is continued by "A" merchants in that area, notwithstanding the additional cost involved;
- (5) because there is irregularity in the rapidity with which the clip is presented by the farmer for collection, and the earlier it has to be collected the more seasonal (and therefore the more costly because of the need to work overtime) is the merchant's job, and the longer he may have to hold it in his warehouse.

71. Thus the system of remuneration might perhaps be regarded as somewhat rough and ready. It emerged under the stress of war and it may seem that it is not necessarily the best system to serve a more permanent purpose. In the memorandum proposing an investigation into merchants' costs, issued by the Board early in 1953, it was said that they were "in need of factual information on the costs incurred by the different classes of 'A' merchants". The Board expressed the hope that as a result of obtaining

estimates of average costs for different groups it would be possible "to ensure that remuneration was equitably distributed". This objective does not appear to have been pursued.

CHANGES IN THE BOARD'S MARKETING ARRANGEMENTS, 1955 ONWARDS

72. Following a Cost Survey taken in co-operation with the merchants, and negotiations on various forms of contract which are described more fully at paragraphs 90 to 100 below, the Board in March, 1955, made changes in their offers of contract for the wool year commencing 1st May, 1955, and in the conditions of service of the merchants. In place of the previous one-year contracts, alternative forms of contract were offered on the following basis:—

- (1) Either a one-year contract at the existing rates of remuneration plus an agreed increase in the allowance for daggings;

Or a five-year contract at the above rates less 10 per cent. on the fees for grading and handling⁽¹⁾. This contract would also make provision for an annual adjustment in respect of changes in costs where the net average cost change exceeded $2\frac{1}{2}$ per cent. either way.

- (2) The Board also announced certain other changes in the conditions of service of the merchants:—

- (a) Whereas it had been the practice that wool producers could change their merchants only in exceptional circumstances, they would now be free (subject to four expressed limitations) to choose the merchants whom they wished to handle their 1956 and subsequent clips. There was an overriding condition, however, that no producer could change to a merchant receiving the higher rate of remuneration, i.e. from a merchant serving under a five-year contract to a merchant serving under a one-year contract.

- (b) Merchants would be free to canvass producers for the handling of their clips.

These terms were never agreed by the complainant organisations, who advised their members to sign the five-year contract under protest. Ultimately all the merchants signed the five-year contract. Signed contracts from 48 merchants, representing 52 contracts, were accompanied by letters of protest, and 75 contracts were received by the Board without individual expression of disapproval.

73. During the 1955-56 season correspondence was exchanged between the Board's and the merchant organisations' accountants on the method of calculation of the adjustment provided for in the five-year contract for cost variations if these amounted to more than $2\frac{1}{2}$ per cent. either way in any year, and procedure was agreed between the Board and all the merchant organisations. At the end of the 1955-56 wool season the Board in consequence issued supplementary contracts, giving effect to the principle of retrospective adjustment for increased costs. The percentage increases made

⁽¹⁾ The reduction did not operate on the relatively unimportant allowances for extra storage, sorting and carriage.

each year as a result of the application of the cost-variation clause are as follows:—

	<i>Increase on 1955-56 basis</i>	
1955-56	7 per cent.	applied retrospectively at the end of the 1955-56 season.
1956-57	15 per cent.	i.e. the above 7 per cent. plus 2 per cent. applied at the beginning of the season, plus 6 per cent. applied retrospectively at the end of the 1956-57 season.
1957-58	17 per cent.	i.e. the above 15 per cent. plus 2 per cent. applied at the beginning of the season (any end of season adjustments for 1957-58 are not yet known).

The average weighted remuneration actually realised in each year up to the 1956-57 clip year is set out at Appendix IV, Table I.

HANDLING BY THE BOARD

74. At a Board meeting on 24th February, 1955, it was decided to establish a small experimental unit for direct handling of producers' wool at the Board's new premises at Oak Mills, Bradford. This unit was to handle part of the clips allotted to a Cumberland merchant who wished to give up part of his business. The proposal had been submitted to the Joint Committee on 23rd February, 1955, and was strongly objected to by all the merchants' representatives (see para. 160). The unit commenced operations at the beginning of the 1955-56 clip year.

THE JOINT COMMITTEE

75. During these years the Joint Committee provided for in the Scheme (see para. 52 (ii)) met regularly as required but held no other meetings. It has been constituted as follows:—

- 1 member representing the Country Wool Merchants Association
- 1 member representing the British Wool Federation
- 2 members representing the Wool Federation of Scotland
- 1 member representing the Welsh Country Wool Merchants' Association
- 1 member representing the U.K. Co-operative Wool Federation
- 1 member representing the U.K. Fellmongers' Association
- 1 member representing the Wool Textile Delegation
- 6 members representing the Board (the Board include in their nominees one Board member with merchanting experience and one Board member appointed by Ministers).

76. Because of the presence of the two members representing other wool interests, it was agreed by the Board and the merchant organisations that matters governing their contractual relations with the Board should be dealt with mainly at meetings between the Board and representatives of the five merchant organisations rather than in the Joint Committee. The following is an extract from the Board's document "Policy for the Future—Merchants" issued in January, 1953, bearing on this point:—

" . . . as re-organisation progresses it will be difficult for the Joint Committee to digest and advise upon the complex issues involved at its

comparatively few meetings. In order to keep merchants' Federations in closer touch with development, meetings may be held between the Secretaries of the Federations and the Board's Officers. In the light of these discussions merchants' representatives on the Joint Committee can attend its meetings fully briefed with the background of each subject. The Joint Committee is the functional link between the Board and the Wool Trade and the passing of more detailed information through meetings of Secretaries should increase the potential value of the considered advice forthcoming from the Joint Committee".

* * * * *

77. The negotiations on remuneration were in fact largely conducted between a Co-ordinating Committee of the four private merchant organisations, with representatives of the Co-operative Organisations, and the Board. In practice the negotiations were also discussed at Joint Committee meetings, but no additional meetings of the Joint Committee over and above those required by the Scheme were held during the period of negotiations over the 1955 contract.

78. The topics most frequently discussed at Joint Committee meetings have been canvassing and change of merchant, and marketing arrangements in the Scottish Islands; other topics included auction arrangements, responsibility for and allowances to be made for collecting daggings, methods of discouraging producers from using fluids which resulted in permanently stained wools, the use of suitable marking fluids, and the marketing arrangements for the Northern Ireland clips.

79. We were informed that only three procedural questions were brought before the Joint Committee. Questions had been raised in 1951 and 1952 about permission for deputies to attend meetings in place of members and about the way in which the Committee could be notified of the Board's decisions. Changes in procedure were agreed to meet both these points. On 22nd July, 1953, the Board's Chairman suggested that trade members on the Committee might submit a recommendation if they wished, and vote on it so that the matter would be passed to the Board as a unanimous, majority or minority view of the trade members; Board members would not vote. The suggestion was unanimously approved by the trade members on the Committee. We understand that on only one occasion has a formal Resolution been put to the vote.

Part V—Main Complaints Referred to this Committee

(A) REMUNERATION DISPUTES, 1953-55

80. In paragraph 26 (1) we have defined the complaint under this head in the following terms:—

"The alleged arbitrary conduct of the Board during and after the negotiations on the contract, and in particular their action in offering to individual merchants, contrary to the wishes and contentions of the complainant organisations, either a one-year contract subject to such terms as were alleged to make its acceptance tantamount to commercial suicide, or a five-year contract at rates representing a 10 per cent. reduction on existing rates of remuneration".

GENERAL BACKGROUND

81. In 1950, when the Board took over responsibility for wool marketing from the Government Departments concerned, they also took over the arrangements operated by Wool Control. During the control period the remuneration of the merchants who had acted as agents for Wool Control had been negotiated between Control and the same five organisations representing merchants as exist today. Several surveys of costs had been carried out by or on behalf of the Government Departments who were responsible for the operation of Wool Control, and these surveys were used as a basis for determining the rates of remuneration paid to the merchants. There were disputes and differences between the Departments and the merchant organisations on the results of the Cost Surveys, and on these occasions the Departments decided what they considered to be reasonable terms.

82. When the Board commenced operations the merchants were already at work on the 1950 clip and carried on to the end of the season on the same terms as they had received under Government control. At the beginning of the 1951-52 season, all the merchants accepted the Board's invitation to continue on the same terms (apart from the question of increased remuneration) and it was understood that they would be allocated the wool from the same producers, subject to such few applications by producers to change their merchants as might be granted by the Board. Similar arrangements were made each year up to 1955-56. During this period there were a number of requests by the private merchant organisations for longer security of tenure than one year.

83. Remuneration for collecting the 1950 clip had been determined before the Board took over and the Board continued to pay the rates of remuneration that had been fixed. At the end of the 1950-51 season the four private merchant organisations applied for higher remuneration for the 1951-52 season on the ground that costs had increased by 40 per cent. since 1946. The Co-operative Federation maintained that the existing rates of remuneration were adequate and still enabled them to pay dividends and bonuses. After taking account of the increase in the clip in the preceding few years and the resumption of private trading in wool, especially in overseas wool, since 1947 (which enabled many merchants to spread their overheads), the Board increased the rates of remuneration by 10 per cent. This was accepted under protest by the private merchant organisations. Requests by the private merchant organisations for further increases for the 1952-53 and 1953-54 seasons were refused by the Board, and for the 1954-55 season it was agreed that no change in remuneration should be made as the Cost Survey was in process.

84. In January, 1953, the Board had issued the important policy statement, already referred to in para. 56, about the place of the merchants in the future marketing arrangements operated by the Board. The object of the statement was to remove doubts or fears that might exist among the Board's agents as to future developments, and the hope was expressed that the statement would help "A" merchants to formulate their own policy for the future on lines that would lead to mutual security and well-being.

In the statement the Board set out several general lines of Board policy as indicated in the following extracts:—

“Responsibilities of the Board

The responsibilities of the Board lie in the two fields of procurement and sale. The Board has to make arrangements for the efficient and economical collection, handling, grading and packing of wool received from farmers. The price paid to producers is guaranteed by the Government and the Board has no direct control over the level of this price. Producers cannot therefore judge the Board on the basis of the level of the guaranteed price, but producers and the Government can judge the Board according to its efforts to reduce the costs of procurement. In the field of procurement the Board's primary aim is such cost reduction as can be obtained without loss of efficiency. Every item of cost incurred by the Board is under review and several economies have already been effected within the Board's domestic organisation.

The Board is convinced that economy and efficiency in the handling of wool can best be maintained and improved through a development of the present system of employing authorised merchants to carry out the physical processes concerned. There appears to be no economic justification for the Board taking over the present functions of 'A' merchants (except perhaps in isolated cases as a yard-stick of costs, but even this seems most improbable as other yard-sticks are available).

In the selling field the Board is responsible for placing British wool on the market at the time and place and in the condition which will secure maximum returns under varying market conditions. Treasury liability relative to the guaranteed price to producers depends to some extent on the success of the Board in meeting its market and this in turn may influence future guaranteed prices. The speed and standard of 'A' merchants' services are vital factors in the achievement of this objective.

Role of Authorised Merchants

There is a secure place for the efficient 'A' merchant in the Wool Scheme. The value of the goodwill and traditional link between merchant and producer is appreciated by the Board. But the merchant's greatest surety of continued employment must be his ability to perform the required handling services at less cost than the Board itself could perform them.

Merchants' costs depend partly on the extent of the services rendered. These vary considerably, some merchants collecting by lorry, some weighing clips on the farm or at depots convenient to producers, some making advance payments, etc. The Board does not want to discourage such services which are in excess of its minimum requirements from 'A' merchants. For reasons of location or business organisation some firms can afford to perform them while others cannot. In general, the Board will not authorise producers to change their merchant solely on the grounds that these extra services are not carried out. Nor would the Board agree to pay a remuneration rate which would enable every merchant to perform these services.”

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"The Board will do all in its power to help its agents to reduce their costs but in some aspects of the problem merchants must do this on their own initiative. Security of employment and adequate remuneration will be assured to the efficient and economical merchant but the Board cannot guarantee a remuneration rate which will keep high-cost firms in business."

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"Bearing in mind all the possible advantages of small units, the present size structure of authorised merchants is unlikely to provide the most economical machinery for handling British wool in the years ahead. The change required is small and marginal and it can be approached on a gradual evolutionary basis."

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"The Board can only guarantee the continuation of efficient and economical firms. Merchants and their organisations must therefore look ahead and direct their policy along the lines which in the future will give them security and profit. The Board has to justify its efficiency to producers and to the Government. It must therefore plan its development on lines of economy. It is important that the welfare of the Board's agents should be identified in this development. The Board and its agents have common objectives—security and an economic return—and they should work together to achieve this.

The Role of 'B' Merchants

The Board is fully appreciative of the services of many 'B' merchants within its marketing channels. For the purposes of administration and control it has decided to deal direct with 'A' merchants who are free to employ such sub-agents as they require in carrying out the Board's work. Responsibility is therefore centred on the 'A' merchant."

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"While it is known that many sub-agents provide services which fully earn their remuneration it appears that the services of others are very costly. The rate paid for the work must be the concern of the 'A' merchant, but if the 'A' merchant can do the work cheaper himself the Board cannot be expected to cover the extra cost in its remuneration rate."

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COST SURVEY

85. The Cost Survey was proposed by the Board in a separate memorandum also sent to the merchant organisations early in 1953. This too was an important document (it was issued only a month or two after the document just quoted) because it is one of the chief contentions of the complainants that the Cost Survey was subsequently used for a purpose for which it was not intended. After outlining the object of the Survey as being to provide factual information on the costs incurred by the different classes of "A" merchants, the document reminded merchants that there had been

previous enquiries under Government auspices, the latest being in 1945, and continued:—

"Since 1945, however, there have been big changes in the business activities of many merchants which have affected their costs. Firstly, there has been the significant increase in unit costs since that date. Secondly, some merchants have undertaken new activities outside their work for the Board, or have been able to increase the scale of existing activities. Others, who undertook storage on behalf of Government Departments have lost the whole or a large part of their revenue from this source. Thus it is quite impossible to use the 1945 estimates as a basis for arriving at a reliable indication of the current position.

In any case, the 1945 enquiry only provided a figure of average cost. It is hoped that in the proposed enquiry it will be possible to arrive at estimates of average costs for different groups of merchants which can be used to ensure that remuneration is equitably distributed."

The document went on to say that a much larger sample would be needed than in 1945 and that:—

"... it will be necessary to ensure that a representative cross-section of merchants is investigated. The sample must be representative not only in the sense that it should permit the calculation of average costs accurately, but also that it should permit the calculation of a suitable measure of the variation in cost. To achieve this it is suggested that the merchants should be divided into groups or 'strata' and a proportion of the merchants in the sample should come from each stratum. Within the strata the merchants to be included in the sample should be chosen by random methods.

It has also to be remembered that since some merchants now have a wide and varied range of activities, it will be necessary to allocate costs between those incurred in respect of work for the Board and those incurred in connection with merchants' other activities. It is most important that a high degree of accuracy should be obtained in making this division. A large part of merchants' costs are overheads which will be difficult to allocate. It seems, therefore, that where it is possible to allocate expenses on an objective basis, every effort to do so should be made, even though some additional record-keeping may be necessary."

86. In the notes on the method of treatment of certain important items of costs, the Board stated:—

"Where commission is paid by the merchants to 'B' and 'C' merchants, this will be fully taken into account as an item of cost."

On procedure, the Board proposed that the sample should be divided into two groups:—

"(a) those handling less than 500,000 lbs. of wool, and (b) those handling more than 500,000 lbs. of wool."

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"In the 'more than 500,000 lbs.' groups variation in throughput is greater, and therefore cost variation is likely to be greater. Therefore in these groups a sample exceeding one-half has been taken so that the variation may be more accurately measured."

The Board also thought that there should first be a limited pilot survey into the costs of handling the 1952 clip to ensure that the methods to be used in the full enquiry were practicable and equitable, and that the full survey should cover the costs returns of 68 merchants in the handling of the 1953 clip. On the use of the cost information, the Board stated:—

“Both the Board and merchants’ representatives will wish to take account of the results of the enquiry as one factor in considering merchants’ remuneration. In deciding future remuneration in the light of costs collected the Board will consider what should be an appropriate ‘profit element’.”

87. On 25th April, 1953, a letter was sent by the Board to the Wool Federation of Scotland about the Federation’s attitude to the proposed cost investigation. In this it was said: “It is felt that there might be some misunderstanding regarding the purpose of the proposed costings, which is intended to provide evidence which may be mutually accepted as a basis for fixing a fair rate for the job”.

88. In subsequent discussions, the private merchant organisations opposed the proposal for a pilot survey as being elaborate, expensive and unnecessary in view of the good cross-section to be covered in the Survey itself. The organisations also opposed proposals by the Board that the Board should discuss apportionments of costs for dual purpose firms with the firms’ accountants before the cost returns were completed and that an independent accountant should make the apportionment for the firms. The Board did not proceed with these proposals; and the arrangements for the Cost Survey were finally agreed with the merchant organisations early in February, 1954. Costs were to be taken of 35 firms handling less than 500,000 lbs. and of 18 firms handling more than this amount of wool, the firms to be selected by lot. The information obtained was to be treated as confidential and individual returns were to be known by code numbers only. In the letter sending out the questionnaires on costs to the firms taking part in the Survey, the Board said that their aim was “a just and impartial assessment of costs”, and that such an assessment would be the surest foundation for successful marketing of the increasing British wool clip by the Board and their “A” merchants together in future years to their mutual benefit. Separate forms were provided for dual purpose firms, whose certifying accountants were required to certify not only that the completed schedules were correct but also that the apportionments were “fair and reasonable according to the information and explanations which I/we have required”.

89. The completed returns for the first half of the Survey (from firms whose financial year ended 31st December, 1953) were received by the Board by September, 1954, and were issued to the merchant organisations’ accountants in early November. The second half of the returns (from firms whose financial year ended later than 31st December, 1953) was received by the Board and passed to the merchant organisations by the end of November, 1954. The results of the Cost Survey for each region, except Scotland, and the provisional results for Great Britain were sent to all organisations on 21st December, 1954. Full results were not sent because the Scottish figures were incomplete on account of one agent not having sent in his return; and on 8th February, 1955, the Board agreed to accept the

Scottish figures that had been submitted and sent out on that date the final results of the Survey. These differed from the earlier version only in that Scottish figures were now shown separately.

THE BOARD'S NEW POLICY PROPOSALS ON REMUNERATION, ETC.

90. *The Board's first policy proposals* relating to the remuneration of merchants were issued for consideration by the merchant organisations on 22nd September, 1954. In a memorandum issued on this date it was stated that the Board's Cost Survey Committee⁽¹⁾:—

"has appreciated from an early stage in its deliberations that the cost material submitted by merchants could not form an exclusive basis for fixing remuneration to merchants. Points which gave rise to this conclusion were:

- (a) there is inevitable error in the apportionment of costs between sections of a business ;
- (b) actual costs include costs which are unnecessary or uneconomic ; and
- (c) there is a tremendous variation in cost between individual firms which would make any average figure unrealistic.

The Committee believes that in any case a cost-plus basis cannot provide the incentives to efficiency which the Board requires in its marketing policy. A solution is required which will provide realistic incentives to all merchants to handle wool at the most economic cost and allow the expansion of the more economic businesses at the expense of those firms which are less economic without direction by the Board. This solution should also, if possible, reduce the difficulties connected with negotiation and agreement between the Board and Federations."

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"Preliminary discussions on the Board's new financial agreement indicate that the Government intends to fix a guaranteed price which in future will include marketing costs. In this way the Government hopes to provide an incentive to the Board to keep its costs at a minimum and pass on to producers as much of the price as possible.

It is therefore proposed that the Board should in turn pass on to the merchants a similar incentive. The following example illustrates the arrangement:—

					d.
Government's Overall Price	...	...			58
Board's Cost (Admin., Brokerage, Interest)					—1½
Merchant's maximum remuneration	...				—2½
					<hr/>
Producer's Average Price	...	...	...		53½d."

* * * * *

(1) A Committee set up by the Board on which the merchants were not represented.

91. The radical suggestion was then made by the Board that merchants should be free to compete against one another by individually offering to producers additions to the price to be paid for the wool. These additions would take the form of rebates taken out of the maximum rates of remuneration, to help in fixing which the results of the Cost Survey were to be used. The following further extracts from the memorandum give an outline of these and other important changes proposed, and of what would be the effect on producers and merchants:—

“The cost survey results would be used to help the fixing of maximum remuneration. The maximum rates would in effect fix a ceiling to merchants’ remuneration, but the actual level of remuneration would be decided by the actions of individual merchants.”

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“In the light of the current trend of less control over the individual the Board would in any case need to consider giving producers more freedom in their choice of merchants. The Cost Survey Committee have also considered the desirability of using a greater degree of freedom of choice to assist the Board in channelling wool more economically.

A greater degree of freedom of choice is an essential in those proposals to provide the stimulus which will activate competition between merchants. A small degree of control by the Board would still be desirable in order to maintain impartiality of grading, i.e. the Board could continue to refuse to allow a producer to change whose appeal had been turned down by a Tribunal. Similarly, the Board through its Regional Officers would have to ensure that no merchant was “swamped out” in any one season.

Another major change which would be involved would be freedom of merchants to canvass.”

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“Effect on Producers

Producers would have:—

- (i) greater individual freedom;
- (ii) all savings by the Board and by merchants passed on to them directly;
- (iii) in some cases the choice of rebate or additional services.

Effect on Merchants

Under these proposals the Board would be giving merchants the maximum possible freedom of operation. Economic and enterprising merchants should welcome the opportunity to expand their businesses by their own competitive efforts.

In this context, it will be noted that the Survey has clearly brought out the very wide differences in cost which exist, and the new proposals, because of their flexibility, will permit adjustment to this wide variety of circumstances.

The system would encourage merchants to maintain and strengthen their links with producers to the benefit of both.”

92. The particular scheme put forward was rejected by all the merchant organisations at a meeting held on 12th October, 1954. The Board did not proceed with it and we were not invited to express any opinion on its merits. The Board confirmed that they had dropped the scheme at a meeting of the Joint Committee held on 27th October, 1954, when it was agreed that consideration of policy changes should be deferred until the Cost Survey had been completed.

93. An interjection may be useful about the use made in the Board's memorandum of 22nd September, 1954 (para. 90) and in their prepared statement for the meeting of 19th January, 1955 (para. 97 below) of the term "cost plus basis". Exception was taken to this term at the hearing by Counsel for the complainants on the grounds that it represented an abuse of the English language. We sympathise with Counsel in his objection. It may be as well to make it clear that as used by the Board the term does not refer to a practice under which the profit received by the individual enterprise would be increased rather than diminished by reason of its own inefficiency. The Board have applied the term to the system under which the agents' remuneration depends on the costs prevailing on the average throughout the trade but under which relative efficiency on the part of the individual enterprise will show itself in a relatively high profit margin for that enterprise. Whatever may be said for or against the merits of such a system the term "cost plus basis" should not in its ordinary derogatory sense be applied to it.

94. *The Board's second policy proposals* were issued to the merchant organisations on 6th December, 1954. The memorandum presenting them was introduced by a letter dated four days earlier. In this letter the Board outlined the procedure and programme which it was proposed should be followed in connection with the Cost Survey; the following are extracts from the letter:—

"Calculation of an Average Cost Figure"

Necessary steps are as follows:—

- (i) the calculation of average cost by Regions from the information returned;
- (ii) the weighting of the result according to Regional weights;
- (iii) the adjustment of the weighted Gt. Britain cost in the light of cost changes since the year of the sample;
- (iv) the addition of flat-rate costs such as those for sheets, interest, finances, etc.

These steps should result in an up-to-date weighted average cost (per lb.) figure for all the firms in the sample. This figure and its components would also serve as a basis when considering the result of cost changes in future years."

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"Negotiation of Average Remuneration Rate"

When the average cost figure has been calculated as in . . . (i) to (iv) above, negotiation to fix an average remuneration rate may commence. This would take the form of mutual assessment of the various items which would be included in the margin above average cost."

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"To carry out the procedure detailed above, the following programme is suggested:

1. Ask accountants to confirm figures for issue to Federations. . . .
2. Issue policy memorandum and agreed figures to Federations. . . .
3. The Board's Cost Survey Committee would then be pleased to meet Federation representatives to discuss:
 - (i) The policy memorandum
 - (ii) Any points of procedure arising from this letter.
4. The Calculation of Average Cost figure by accountants. . . .
(The work leading to this would be going on all the time.)
5. Negotiations on Average Remuneration Rate between Cost Survey Committee and merchants' representatives. . . .
6. Meetings to discuss an equitable break-down of average remuneration. . . .
(Formulation of a remuneration schedule, etc.)

It is of course, impossible at this stage to suggest dates by which the various stages should be completed."

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95. In the memorandum itself the Board confirmed that:—

- "(1) The Cost Survey results should be used as a base for the negotiation of an average remuneration rate. This should then be broken down into a remuneration schedule of a form somewhat similar to that in current operation. The analysis of average cost obtained from the Cost Survey could also be used as a basis when adjusting remuneration in the light of cost movements in the future.
- (2) The remuneration rates contained in the schedule would be regarded as *maximum* rates. All merchants would be invited to contract at rates relative to the maximum. The following example shows three rates, but it is emphasised that the groups suggested are provisional and may have to be modified or extended according to circumstances:
- | | |
|--------------------------------|-----------|
| Maximum | —Group 1. |
| Maximum minus $\frac{1}{4}$ d. | —Group 2. |
| Maximum minus $\frac{1}{2}$ d. | —Group 3. |
- (3) Any saving to the Board through the introduction of differential contracting rates could be distributed equally to all producers through subsequent years' prices.
- (4) Restrictions on canvassing would have to be exercised.
- (5) A producer should be free to choose:
- (a) a merchant in the same category as his present one,
 - (b) a merchant in a higher category.

Unless under exceptional circumstances, no producer could change to a merchant in a lower category."

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"(7) The Cost Survey Committee has given particular consideration to the views of merchants' representatives concerning the desirability of contracts for periods of longer than one year. It would be possible to combine a form of longer-term contract within the proposed system as modified: e.g.

'Group 1'	1 year contract	}	1
'Group 2'	3 year contract or		2 year contracts."
'Group 3'	5 year contract		4

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96. This scheme was discussed by representatives of the Board and the organisations at a meeting held on 19th January, 1955, at which the Board's Chairman read two prepared statements. By this time the Board had again modified their scheme and they suggested that the deductions from the maximum rates on the longer-term contracts should be $7\frac{1}{2}$ per cent. and 15 per cent. instead of $\frac{1}{4}$ d. and $\frac{1}{2}$ d. per lb. More important, the Board had now reached the point of actually proposing what the maximum average rate of remuneration should be. The Chairman stated that:—

" . . . In the light of Survey results, the Cost Survey Committee believes that under existing circumstances a reduction of $7\frac{1}{2}$ per cent. on present remuneration rates would still allow an adequate income to the Board's agents and would be a more realistic cost to the Board of handling the British clip.

This objective can best be achieved by the introduction of a system which allows firms to contract at one of three rates—Maximum (i.e. present remuneration), Maximum minus $7\frac{1}{2}$ per cent. or Maximum minus 15 per cent. The Cost Survey has shown that there are firms who could well afford to contract at the lowest rate."

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97. In his statement the Chairman had introduced these conclusions by referring back to the Board's memorandum of January, 1953, in the following terms:—

" . . . In January, 1953, the Board issued a statement 'Policy for the Future—Merchants' which outlined in general terms the Board's policy regarding the employment of authorised merchants.

At that time we assumed that firms with other business besides that of the Board could spread overheads and so reduce the average cost of handling British wool. This led to the statement: 'There appears to be no economic justification for the Board taking over the present functions of "A" merchants.'

But a most striking result of the Cost Survey is that the *lowest* average margin is shown by firms who are also wool merchants and the *highest* by firms who do nothing except the Board's work."

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He stated definitely that the Cost Survey had disclosed an unduly wide spread of costs and especially low margins among dual purpose firms which

the Board's Cost Survey Committee put down either to errors of apportionment or to inefficiency. Further, he went on:—

“ . . . The cost survey results show that there are in existence some firms which are clearly uneconomic.”

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“ Costs returned include certain inessential costs, the greatest of which is payments to sub-agents . . . some of whom provide little or no useful service under the present system of marketing.”

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“ It is necessary to form a composite picture of the Cost Survey results from which the Board may determine its policy. First, the Board must decide whether it is reasonable to base future remuneration on the *average cost as returned* plus an element of profit. The Board could not accept *this* cost-plus basis. . . .”

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“ The Cost Survey Committee, in the light of these circumstances, has concluded that:—

- (a) Under the present system of remuneration there is inadequate incentive to economical handling.
- (b) The present rates of remuneration condone the payment of unnecessary costs.
- (c) The Survey figures illustrate that the present system is unduly costly and that adjustments are necessary.”

98. The Chairman's statement was discussed at the meeting and the Board's proposals were rejected by all the merchant organisations, including the Co-operative Wool Federation. The private merchant organisations maintained that on the basis of the Cost Survey results there should be an increase of about 22½ per cent. on existing rates. On behalf of the Co-operative organisation it was, however, stated that they considered that the Board's conclusions were the only ones that could be drawn from the Cost Survey. It was finally agreed at the meeting that an attempt should be made by accountants to agree on the outstanding items in the Cost Survey, but that the questions of policy and of the allowance for profit should be dealt with at a full meeting between the Board and the organisations. At a meeting between accountants on 31st January, 1955, agreement was reached on two of the five outstanding items, but there was no agreement on one minor item and on the two major items, inessential costs and proprietors' remuneration.

99. The Board's third policy proposals were put to the organisations on 16th February, 1955. The Board's Chairman again read a prepared statement as being the basis for discussion. In the statement the Board first indicated their agreement to a figure on the minor outstanding cost items; they referred to the question of inessential costs and recognised that there had been failure to agree on that outstanding item. The Board then referred to proprietors' remuneration and profit. It was stated that at the

average rates of remuneration in force under the previous contract (plus an increased allowance for daggings), on the Board's assessment a balance remained, to cover both reward for services of proprietors and profit, amounting to 35 per cent. of the cost figure, compared with a figure of 32 per cent. on the organisations' assessment. On that basis the Board argued that the existing scales of remuneration provided a reasonable return to the ordinary run of merchants and an extremely good return to a large number. The statement then again referred to the average margin of dual wool firms being inexplicably lower than the margin for single firms, and gave the Board's view that the difference had been due to errors of apportionment amounting to a figure which represented about 5 per cent. over the whole of the sample. If a correction were made for such errors, then the proportion of the cost figure for proprietors' remuneration and profit would be increased to 44 per cent. and 40 per cent. respectively.

100. The Chairman's statement was then considered paragraph by paragraph. The merchant organisations' accountants did not accept the figures given by the Board as an interpretation of the Cost Survey. Towards the end of the meeting the Board put forward a two-tier proposal. They suggested a one-year contract at the existing rates of remuneration, or a five-year contract at the existing rates less 10 per cent. for the first two years and less 15 per cent. for the remaining three years and subject to a cost-variation clause. On behalf of the Co-operative organisation a counter proposal was made of a one-year contract at the existing rates or a five-year contract at those rates less 10 per cent. for three years and less 12½ per cent. for the remaining two years. The representatives of the other organisations stated that they would be prepared to recommend to their members a proposal for a three-year contract at the existing rates with no change in the present system restricting producers' freedom of choice of merchant. Finally it was stated on behalf of the Board that they were prepared to accept a contract at the existing rates for one year only, with qualified freedom of producers' choice of merchant to operate from 1956; but they reserved the right to offer the alternative contracts to the individual merchants.

EVENTS FOLLOWING THE BOARD'S FINAL OFFER

101. By letter on 24th February, 1955, the private merchant organisations submitted their replies to the Board's offer. All were opposed to the two-tier system of remuneration because, as was shown in evidence, it linked greater security of tenure, for which they had been pressing, with reduced margins, when they maintained that costs had increased and increased margins were needed. The British Wool Federation and the Country Wool Merchants Association were, however, prepared to accept one-year contracts at the existing rates. The Country Wool Merchants Association also placed on record their protest against the Board's interpretation of the results of the Cost Survey—in particular the inadequate allowance for sub-agents' commission and for proprietors' remuneration and the combination of the allowance for proprietors' remuneration and profit—and they protested against the Board's assertion that there was an over-statement arising from errors in apportionment of costs. The Welsh Country Wool Merchants Association stated that they would accept the one-year contract at the existing

rates, subject to a cost-variation provision such as the Board had proposed for the five-year contract. The Wool Federation of Scotland stated that they were prepared to accept the existing rates and conditions only if the contracts ran for three years and were also subject to a cost-variation provision and to a guarantee of throughput to within 5 per cent. of the current level. The Federation said that in no circumstances would they consider a one-year contract.

102. Following receipt of this letter the Board feared the possibility of the Scottish merchants as a body ceasing to function as their agents. They therefore took precautions to safeguard the handling of the 1955 clip to the extent of voting money for the purchase of a certain amount of necessary equipment. Apparently the Wool Federation of Scotland heard of these arrangements and their relations with the Board deteriorated still further.

103. On 25th February, 1955, the Board confirmed their final offers as being alternative forms of contract to be offered to all "A" merchants. The alternatives were a one-year contract at the existing rates or a five-year contract at those rates less 10 per cent. but subject to a cost-variation provision. The Board also stated that producers would be free to choose their merchants for the 1956 and subsequent clips. This freedom was to be subject to certain limitations, including the limitation that no producer could change from a merchant on a five-year contract to a merchant on a one-year contract unless there were exceptional circumstances.

104. Copies of the draft contracts were sent out to all the merchant organisations on 9th March, 1955. A few days earlier, before the draft contracts had yet been approved by the Board's legal advisers, they had been sent to the Wool Federation of Scotland and to the Country Wool Merchants Association. These two organisations advised the Board that they had not had sufficient time to examine the contracts or to discuss them with their Solicitors, but in the meantime they proposed certain amendments which were accepted by the Board.

105. On 16th March, 1955, the Board wrote to all "A" merchants offering them the choice of the alternative forms of contract for the year beginning 1st May, 1955, and stating that the completed contracts should be returned to the Board by 29th March, 1955. The offer was accompanied by an explanatory memorandum on the alternative contracts. In this memorandum it was stated *inter alia* :—

" 1. *Security of Employment* "

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"The Board wants the U.K. clip to be handled efficiently and economically and the foundations of the future system must be found in those merchants who take up five-year contracts this year. No hard and fast arrangement can be laid down at this time but clearly various possible lines of action are open to the Board during the next few years. For example, the Board may have to review :—

- (a) the rate at which one-year contracts would be renewed,

- (b) whether applications for five-year contracts should be invited from firms and organisations which do not at present act as agents of the Board,
- (c) whether the establishment of a handling unit by the Board is desirable in a particular area.

The Board would genuinely hope that action under (b) and (c) would be unnecessary."

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"2. Value of Goodwill"

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"*One-year Contracts* : Here there is nothing to sell except the chance of a further one-year contract at an unknown rate, and any transfer of clips is again subject to the approval of the Board in the normal way."

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"3. Allowance for Cost Changes"

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"*One-year Contracts* : As the contracts are in respect of one year there would be no recoupment of higher costs which occur in that year. Also there can be no guarantee that any future one-year contracts would be at a rate which would compensate for increased costs in the meantime.

4. Changes in Weight Handled

Five-year Contracts : Apart from changes in the weight of the national clip it is the Board's wish that merchants who take five-year contracts should have opportunities to expand their intake of wool."

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"Changes from a five-year contract merchant to a one-year contract merchant will not be allowed unless in exceptional circumstances."

* * * * *

"*One-year Contracts* : It can be seen that there will be a general tendency for wool to move away from one-year contract firms. As changes of merchant by producers for the 1956 clip would be made in the light of the contracts issued in 1955 this movement would depend on the type of contract taken out by merchants now.

5. General

It is hoped that all merchants who wish to make for themselves a more permanent place in the Wool Scheme will take out five-year contracts beginning 1st May, 1955. The U.K. Co-operative Wool Federation has stated that it will recommend the acceptance of five-year contracts. The Board is also pleased to learn that a number of private merchants have signified their intention of doing so."

106. All "A" merchants ultimately signed five-year contracts. All the members of the Wool Federation of Scotland and about one-half the members

of the Country Wool Merchants Association, on the advice of their organisations, sent in letters of protest with the signed contracts. The Wool Federation of Scotland and the Country Wool Merchants Association also protested and sought interviews with the Board. Meetings with the complainant organisations were not held until the end of July, 1955, when they protested to the Board at the use made of the Cost Survey figures, at the arbitrary manner in which the final offer of contracts had been made and at the lack of time given to the merchant organisations to consider them. They asked that the Board should agree that outstanding points arising from the Cost Survey should be placed before an independent arbitrator. The Country Wool Merchants Association also asked that, subject to agreement on the result of the Cost Survey, there should be a ten-year contract, the period to coincide with that covered by the recent Financial Agreement between the Government and the Board. The Wool Federation of Scotland wished for a firm undertaking that the Board would not take over the work of "A" merchants in Scotland or handle Scottish clips, and asked that an independent Chairman should preside at all meetings between the merchant organisations and the Board.

107. Written replies were given on behalf of the Board to the organisations' representations. Further letters and memoranda were exchanged, and further meetings with the two organisations were held in December, 1955, when it was stated on behalf of the Board that as all the merchants had entered into five-year contracts, the Board were not prepared to re-open negotiations. During these exchanges the Board felt unable to make concessions in response to points raised by the organisations; both sides became increasingly outspoken, and their relations did not improve. Correspondence between the complainant organisations and the Board on the items in dispute continued throughout 1956. Finally on 11th January, 1957, the complainant organisations submitted their complaints to Ministers.

THE COMPLAINANTS' CASE

108. *The Board's Conduct in the Negotiations and use of Cost Survey Results.* The action of the Board in issuing policy proposals on merchants' remuneration before the Cost Survey had been completed was held to be inconsistent with the general tenor of the Board's 1953 policy statement, with the arrangements that had been agreed with the merchant organisations for the Cost Survey and with normal costings practice.

109. The object of the Cost Survey had been stated by the Board as "a just and impartial assessment of costs", but in the event they had virtually ignored the Cost Survey and had selected minor items and magnified them. There had been no real discussion between the two sides about it. There should first have been an examination of the costings and then talk about a reduction. Instead, the Board had gone ahead with their policy proposals against the wishes and claims of the merchant organisations, and contended that the information available justified a 10 per cent. reduction on the existing level of remuneration, although the organisations had maintained that an increase was justified. In addition, the Board had decided unilaterally that there were errors in apportionment requiring a correction to the figures, and that proprietors' remuneration should not be

treated as a cost item but as part of an average net income figure covering both proprietors' remuneration and profit. The Board also refused to allow more than one-third of the allowance for sub-agents' commission. Above all they refused to discuss profit as a separate item.

110. It was admitted on behalf of the complainant organisations that the Board had never said that they would treat the Cost Survey results as other than one factor in their consideration of remuneration, nor that they would adopt the average figure of cost plus an agreed margin for profit. It was maintained, however, that the merchant organisations had a very definite understanding that there would be negotiation of a profit margin and the merchants had taken part in the Cost Survey on that basis. They had been led to believe from Board documents and statements that, when the Cost Survey had been completed and the figures of costs had been agreed by accountants, the Board would meet the organisations and discuss an average rate of remuneration, taking into account the Cost Survey results.

111. *The Board's final offer.* The merchants and the Board had failed to agree on 19th and 31st January, 1955, on some items of cost, and it was understood that the meeting on the 16th February, 1955, was to agree on an average rate of remuneration. No opportunity was, however, given at the meeting for discussion of the points at issue. There was no discussion of a reasonable profit margin nor any argument or justification for the 10 per cent. reduction proposed by the Board. The Board's Chairman had simply stated the Board's decision to offer as alternatives the one-year contract at the existing rates and a five-year contract at the existing rates less 10 per cent. for two years and less 15 per cent. for the remaining three years, subject to a cost-variation clause. All the representatives of the private merchant organisations thought that the Board's offer was unreasonable, and they made their counter-offer as an attempt to avert deadlock. The Board, however, had made it clear that they were not prepared to compromise when they wrote on 25th February, 1955, to confirm their final offer. In their letter they also confirmed their decision over freedom of choice and added a further reservation, which had not been discussed at the meeting on 16th February, 1955, that no change would be allowed from lower to higher remunerated merchants save in exceptional circumstances. While such a limitation had applied to earlier proposals the complainant organisations had assumed that it had been dropped when they were considering their decisions, as notified in the letter of 24th February, 1955. The Country Wool Merchants Association indicated that had they realised that the limitation would apply they would never have opted for the one-year contract; the Wool Federation of Scotland had already indicated that they would not accept a one-year contract at all.

112. In view of the limitations that were to be applied to the one-year contract the complainant organisations concluded that this contract would amount to "commercial suicide" and they had advised their members to that effect. The organisations had in mind particularly the explanatory memorandum which was sent out by the Board on 16th March, 1955, with the alternative contract forms. The organisations took strong exception to its wording. They regarded it as a "scandalous document" amounting to a threat that, if the 10 per cent. reduction in remuneration was not accepted,

merchants would be allowed work only for one year and then their livelihood would be taken away.

113. *Possible revision of contract terms.* On behalf of the complainant organisations it was admitted that it had not been made explicit in the letters of protest sent in by their members and by the organisations that the contracts were signed on the understanding that they would be capable of revision. It was maintained that the understanding was implicit in the letters since the merchants believed that they had signed the contracts under "duress". It was not, however, contended at the hearing that the signed contracts were invalid in law, although this was suggested in the letters of complaint of 11th January, 1957. The complainant organisations had obtained no satisfaction on the outstanding points which they raised at the meetings in July and December, 1955. They also suggested a reference of the outstanding points at issue to an independent arbitrator but the Board had taken the line that the contracts had been signed and could not now be re-opened.

114. *Redress sought.* The complainants were asking, as a matter of "simple justice", that the remuneration rates in the current contracts should be reviewed as between the Board and the organisations with effect from 1st May, 1957, and referred to arbitration if no agreement was reached, since the terms of remuneration had never been approved by them but had been inserted by the Board in the contracts sent out to the merchants and accepted by many of them under protest.

THE BOARD'S REPLY

115. It was contended on behalf of the Board that it was not true, as claimed by the complainants, that the Cost Survey had been made with the intention of defining a formula upon which an average rate of remuneration could be based. The Board had stated in their memorandum on the Cost Survey in early 1953, and on a number of occasions afterwards, that the Survey would be one factor to be taken into account in the consideration of merchants' remuneration. While there was certainly some change in the Board's attitude towards the use to be made of the Cost Survey results, there was nothing in the nature of a *volte face*. The defects that had come to light in the Cost Survey and the failure to reach agreement on all the items meant that it could not be used as intended. By the middle of February the Board were very conscious that time was running out and that they had to have a figure to offer the merchants. They finally decided on the existing rates less 10 per cent. for five years as being a reasonable offer after checking it against the Cost Survey results, which showed that the general run of merchants could afford such a reduction.

116. The Board considered that they had a duty under the Scheme to ensure that the marketing arrangements were efficient and economic, and their remuneration proposals were part of their general policy aiming at a gradual remedying of defects in the arrangements. The cost returns showed that there were wide variations in margins between individual firms which could not always be accounted for by factors outside the firms' control, and that some firms were lacking in efficiency or were employing sub-agents unnecessarily. Also there were unnecessary costs (i) for carriage due to the

system of allocating wool to merchants (costs that were saved when limited freedom of choice was introduced and producers could send their clips to merchants nearer at hand) and (ii) due to the employment of too many small firms. For these reasons the Board were not prepared to offer remuneration based strictly on the Cost Survey results; they realised that some businesses would be sold and that there would be a tendency for the average size of firm to increase, resulting in lower average costs.

117. No evidence had been given of any merchant having lost money since the five-year contracts came into operation. It was thought that the new rates, which were then in their third season, had enabled all reasonably efficient firms to make a fair profit. The Board had received two applications in 1956 for new agencies, but had been obliged to refuse them in accordance with assurances given to the merchant organisations in March, 1955. Since 1955, at least eleven agents' businesses had been sold, and of these eight were sold to existing agents. The price paid for the businesses was not known in most cases, but one case was known where £4,100 was paid for the benefit of the Board's contract and there were two others where £4,000 was paid for the good-will. Experience at the Board's handling unit at Oak Mills had shown that the remuneration rates were adequate since the unit, although very small, had shown a reasonable profit.

118. The offer of the one-year contract at the existing rates was intended as a concession to the merchants who could not afford to do the work for less. It was intended to provide a breathing space during which they could either introduce economies into their business or amalgamate or even sell up. The Board had no duty to maintain in business permanently those merchants who could not afford the reduction in remuneration.

119. It was argued that the Board had good reasons for sending out the explanatory memorandum with the alternative forms of contract in mid-March, 1955. The Board had become aware that the merchants were siding in favour of the one-year contract; and it was thought desirable to encourage them to the greatest possible extent towards accepting the five-year contract and to discourage them from taking the one-year contract *en bloc*.

120. In the Board's view the memorandum was a perfectly fair, factual statement which had been written in circumstances that required it, and set out points that the merchants should have had in mind when considering the alternative contracts. The Board considered that there was a large number of merchants who could afford the 10 per cent. reduction; and that they were justified in their fear that merchants who could well afford the lower rates might be encouraged by their organisations to take the one-year contract, which was intended for the less efficient firms. It was not the object of the explanatory notes to make the one-year contract appear wholly unacceptable but it was meant to suggest that the merchant on a five-year contract was more likely to continue as a permanent part of the system.

121. *Redress sought by the complainants.* It was submitted to us that no case had been made for re-opening the five-year contract as requested by the complainants. The contract had not been subject to any condition that the remuneration rate should be increased or referred to arbitration.

There ought to be very strong evidence to back a recommendation by the Committee as regards a contract that had been accepted and acted upon. It was emphasised that no evidence had been put before us that merchants had suffered hardship.

DIFFERENCES OVER THE COST SURVEY RESULTS

122. In the preceding paragraphs we have referred mainly to the disputes that arose over the Board's policy proposals, but we think it also relevant to mention other differences between the two sides over the interpretation of the Cost Survey results and subsequently. We do not regard these differences as directly affecting the issues before us, and have dealt with them briefly in Appendix V. In this Appendix we set out a table showing the position reached in the negotiations on the Survey and then outline the extent and nature of the differences between the parties.

CONCLUSIONS

123. We have given in detail the story of the negotiations for the contract for the 1955 and subsequent clips because the conduct of these negotiations by the Board is the main complaint referred to us. Paragraph 1 of the submission (Doc. 10. of Appendix I) asks us to find that the Board's action in offering one contract (the one-year contract) which they knew was "commercially unacceptable by reason of the circumstances in which it was offered" and the other contract (the five-year contract) the terms of which had not been "approved or accepted by or on behalf of the members of the complainant organisations" was contrary to the interests of the merchants. We are thus not asked to find that the Board's act in fixing the remuneration for the five-year contract at 10 per cent. below the then current rates was contrary to the interests of the merchants but that their act in offering this reduced rate, which had not been agreed with the merchant organisations, as the only alternative to a commercially unacceptable one-year contract, was contrary to the interests of the merchants. In other words, it is the imposition of the contract by the Board, and not what the contract contained, which is the primary matter of complaint.

124. The history of the negotiations shows in our view that the five-year contract with its reduction in margins, although valid in law, was virtually imposed upon the merchants; that this was done with undue haste in relation to the time which might reasonably be expected to elapse for negotiations on remuneration following a Cost Survey; that there was confusion as to the use to which the Cost Survey was to be put; and that throughout the negotiations the Board adopted too rigid an attitude towards the merchants. We deal with these four points in the following sub-paragraphs:—

- (i) We accept the merchants' contention that the one-year contract was commercially unacceptable when read, as was intended by the Board, in the light shed by the explanatory memorandum issued with it; and consequently that merchants were obliged to sign the five-year contract if they wished to continue as the Board's agents. The explanatory memorandum (see extracts in paragraph 105) in effect

threatened that any merchant choosing the one-year contract would have no assurance either of the renewal of his contract at the end of the year or as to the rates at which it might be renewed; and added that, save in exceptional circumstances, no producer wishing to change from one merchant to another would be allowed to change from a merchant who had signed the five-year contract to one who had signed the one-year contract. The Board maintained that they intended the one-year contract to be available for the higher-cost merchant but they also said that they regarded it only as a temporary expedient to allow higher-cost merchants to sell their businesses or amalgamate with another merchant.

- (ii) The Cost Survey covered about two-fifths of the merchant firms and was not embarked upon before April, 1954, and the completed returns were not available to the merchants until the end of November. But all the contracts had to be signed so as to become effective by 1st May of the following year. This programme appears to us unrealistic. Had the Board really intended by this time to continue to use the results of the Cost Survey for the purpose of working out merchants' remuneration in the traditional manner, they should in our view have been prepared to allow extra time for negotiation by offering the merchants a one-year contract for the clip year 1955-56 on the existing basis and at the existing rates of remuneration. It seems likely that most of the merchant organisations would have accepted such a solution. No doubt the Scottish merchants would have objected but the Board would have been in a much stronger moral position if they had made the offer. As it was the Board made it clear, by the confirmation of their final offer in their letter of 25th February, 1955, that they were not prepared to compromise.
- (iii) The Cost Survey was proposed by the Board in a memorandum issued early in 1953, following, as has been seen (paragraph 83), requests for increases in remuneration in the previous three years. As the extracts given in paragraph 85 show, this memorandum linked the proposed Survey closely with the previous cost investigations under Government auspices, saying only that it was intended in the new Survey to produce a more precise result, because estimates of average costs would be arrived at for different groups of merchants. The memorandum concluded by saying that both the Board and the merchants' representatives "will wish to take account of the results of the enquiry as one factor in considering merchants' remuneration . . ." (see paragraph 86 above) and the Board's letter of April, 1953, referred to the collection of evidence by means of the Survey, which "may be mutually accepted as a basis for fixing a fair rate for the job" (see paragraph 87 above). The merchants undoubtedly expected from this memorandum and letter and subsequent discussions, and in our view were entitled to expect, that the results of the Survey would be followed by negotiations, very much on the lines adopted under Government price control, leading to the establishment of rates of remuneration based in some way on the costs shown *plus* a figure for profit. But in the end the Board used the Cost Survey in quite another way, merely to show that many

merchants could afford a 10 per cent. reduction in the existing rates. This change of front was first indicated in the Board's memorandum of September, 1954, when they had received the major part of the results but had not passed them on to the merchants and there was no prior consultation with them. The feelings of the merchants were strong and it appears that the Board may have been forced back on to the Cost Survey again for a time. In any case throughout the autumn and winter the Board appear to have pursued two quite distinct and contradictory strands of policy—one based on continuing the detailed discussion of the Cost Survey by negotiation about disputed items (paragraphs 91, 94, 95 and 98) and the other based on the preparation of proposals for rates of remuneration not directly related to the Cost Survey (paragraphs 90, 91, 96 and 97). The rates finally included in the five-year contracts represented, with minor qualifications, simply a 10 per cent. cut on the rates in force in the previous contracts. Although the size of the cut—i.e. 10 per cent.—was defended by the Board by reference to the results of the Cost Survey, it is obviously a round figure unrelated to the Cost Survey negotiations and, indeed, the Chairman of the Board did not put it forward to us as more than an informed guess. Nevertheless, the discussions between the Board and the merchants were conducted throughout in terms of certain of the figures in the Cost Survey—an unnecessary confusion of nomenclature which was continued in the hearing before us and caused us some perplexity.

- (iv) We think that the Board had some reason for their change of front over the 1955-56 contract (see paragraph 128 below) but we regret that they did not take the merchants more into their confidence about those reasons and did not make a more determined effort to reach agreement, if only on the basis of a further one-year contract as a stop-gap. It seems to us that their attitude throughout these discussions was unduly rigid, and that they were too little concerned to exercise the wise restraint proper to a Board which has been given statutory powers.

125. On the other hand, we are clear that it is the Board's duty to ensure that the clip is collected, graded and stored as economically as possible and that the Board are within their rights in settling what they are prepared to pay their agents. The complainant organisations have further objected to the Board offering an agency contract to individual merchants which had not been agreed beforehand between the Board and the complainant organisations. We do not think that in this matter the Board acted contrary to the reasonable interests of the merchant members of the complainant organisations. While we think the Board should be careful to consult the merchant organisations on matters which concern them, we are of the opinion that it would be contrary to the public interest for the Board to be bound to obtain the agreement of any or all of these organisations before offering a contract to the individual merchants. Further, we do not think that the reasonable interests of the merchants necessarily require that their average remuneration should be arrived at by the traditional method of estimating their average costs and adding an allowance for profit, and we consider that the Board must be free to abandon this traditional approach to remuneration, if they feel it to be inappropriate to present circumstances.

126. The legal position appears to be that these contracts are valid in law, and their validity was not disputed at the hearing (see paragraph 113). They were not signed under any explicit understanding or condition that the negotiations on them would be re-opened. Moreover, we are unable to overlook the fact that they were ratified in 1956 when they were modified to make provision for cost changes. As a contract cannot exist, much less be valid or enforceable, unless there is acceptance as well as offer, the interests of the parties cannot be affected legally in any way until the offer is accepted and the terms of the contract have become enforceable. For this reason we find it difficult to contemplate circumstances (excluding fraud or duress) in which the offer of a contract, irrespective of its terms or the manner in which it was offered, could be held to be contrary to the reasonable interests of the person to whom it was offered.

127. We have reached this conclusion solely on legal grounds and not without reluctance as we deprecate both the method and the precipitancy of the Board in the negotiations, and we feel obliged to record our opinion that in some of the matters set out in paragraph 124 the conduct of the Board is open to serious criticism, and in respect of the explanatory memorandum (see also paragraph 105) perhaps even to censure.

128. There is little doubt in our minds but that the Board were influenced in their decision to introduce a new system of remuneration of merchants by the change in the method by which the Government guaranteed the price of wool to the producers. Their memorandum of September, 1954, in which this change of front first occurred, indicates this (see paragraph 90). Under the new arrangements which came into force in 1955 (see paragraph 56) the Board had a stronger incentive to exercise the maximum economy in marketing costs because the result would be that they could pay more to producers. The Cost Survey itself, the results of which under the old arrangements would no doubt have been part of the evidence produced by the Board in their negotiations with the Government for an increase in the marketing allowance, became under the new arrangements a part of the merchants' case to the Board. These changes appear to have influenced the Board in deciding not to base merchants' margins on an average figure of costs derived from the Cost Survey, with the addition of an allowance for profit.

129. The Board are, as it seems to us, bound to act with discretion and moderation in exercising the very wide powers of control conferred upon them by Parliament and, while it is their duty to ensure that the clip is marketed efficiently and economically, it is also proper that they should pay a fair rate for the work done for them by their agents; it would not be right for them to pay less than a proper rate in order to pass on a larger price to the producers. With this preamble and without committing ourselves to a view for or against the Cost Survey, we think it right to point out, in favour of the Board's view that a different approach was required, that, judged by the results of the Survey, which showed a substantial overall gross margin for proprietors' remuneration and profit, the merchants' request for an increase of about 22½ per cent. in their rates of remuneration (see paragraph 98) appears *prima facie* somewhat unrealistic. Further, the traditional Cost Survey method could not provide a new approach to merchants'

remuneration if that was needed, or deal with the problem of adjusting a system of remuneration based upon pre-war conditions to present circumstances in which merchants' responsibilities are permanently and importantly different from those they had before the war. Again, there is nothing in the Cost Survey method, as initiated in April, 1953, to provide for setting off a proportion of costs against prospective increases in efficiency, as is done in the Annual Review between the Government and the farmers. Indeed, the present five-year contract includes a cost-variation clause, freely agreed by the Board, which suggests that no appreciable increase in efficiency is expected amongst merchants over the five-year period. Apart from these general points, we gained the view during our enquiry that there are admitted defects in the present remuneration system (see paragraph 4 of Appendix V). We trust that the Board and their agents may succeed in devising a better and more up-to-date system of remuneration.

130. In their final submissions (Doc. 10 of Appendix I) the complainants asked us to recommend that the Board should be directed to re-open negotiations on the remuneration rates of the existing contracts as from 1st May, 1957, and also to agree to a reference to arbitration if no agreement is reached. We are not satisfied that a case has been made out for such a drastic interference in the contractual relationship between the Board and their agents. We have particularly in mind that no evidence was put before us by the complainants as to specific losses made by their members under the contracts. We have given our opinion as to the validity of the contracts in paragraph 126.

131. We do not, therefore, recommend that the present contract should be re-opened as sought by the complainants. Nevertheless, our review of the disputes has led us to the conclusion that the existing arrangements under the Scheme for the negotiation of agency contracts are defective in certain respects, and we make recommendations about these in Part VI of our Report.

(B) CHANGE OF MERCHANT AND CANVASSING

132. In paragraph 26 (2) we have defined the complaint under this head in the following terms:—

“The granting of greater freedom for producers to change their merchant and the removal of the ban on canvassing by merchants.”

While this was all that was said by way of written complaint before the hearing opened, we have taken note that the complainants made a specific request during the hearing (doc. 10 of Appendix I) that we would recommend the establishment of tribunals (somewhat on the lines of those in operation under the Wool Control) to consider any disputed case of a proposal by a producer to change his merchant.

GENERAL BACKGROUND

133. Before the war, as has been said, there was competition between merchants for farmers' clips, both in service and in price (para. 44), but when the Wool Control took over and the merchant ceased to be an independent operator, the pattern of marketing existing at the outbreak of war

was frozen by preventing producers from moving from one merchant to another (except for limited and approved reasons) and by prohibiting canvassing by merchants (para. 46). Later, when the Marketing Scheme was under discussion, as has also been said, there were considerable anxieties amongst merchants as to the policy which a Board would adopt towards the merchants. In reply to questions asked at the public inquiry the promoters made it clear that they expected to continue to control producers in their choice of merchants.

134. The Board substantially followed the Wool Control practice until the year 1955, except that they discontinued the regional appeal tribunals on which merchants and producers had, under the Wool Control settled cases of dispute on change of merchant as well as on valuation. In the Board's memorandum to merchants of January, 1953 (see extracts in paragraph 84) it was quite definitely assumed that control of producers in their choice of merchant would be maintained in the future, and merchants were specifically promised that producers would not be allowed to change their merchant solely on the ground that extra services, which some merchants could afford to give and others could not, would not be carried out. On several occasions the Joint Committee were assured that canvassing would not be allowed.

135. So, between 1950 and the 1955-56 season, the Board's policy was to allow change of merchant only for limited reasons (the most important being poor service), to prohibit canvassing by merchants, and to disallow applications by producers to change from one merchant to another if there was any suspicion that canvassing had taken place. The number of applications refused and allowed were reported to the Joint Committee from time to time, but individual merchants were given no warning of, and no opportunity to comment on, a request by a producer to send his clip elsewhere. The decision was made by the Board without reference to the merchant.

136. During these years, one or two references were made to a growing demand amongst producers to be free to change from one merchant to another and in April, 1954, a merchant member of the Board is recorded as telling the Joint Committee "that the feeling was growing among producers now that they were entitled to expect complete freedom of choice of merchant and it was sometimes difficult for Board members to convince them that complete freedom was impracticable". Some evidence of direct written representation from producers was brought to our notice (and part of it had been collected since our enquiry started). The Board supplemented this evidence by reference to the number of applications to change made by producers (see para. 138 below) and to the experience of Board members who had had many personal approaches from producers.

137. In the autumn of 1954, without apparently any previous discussion with the merchants, the Board included in their memorandum of 22nd September, 1954 (which proposed that merchants should be spurred to efficiency by competing on the price which they offered to producers) the statements both that "producers would have to be given much greater freedom to change their merchant" and that "another major change . . . would be freedom of merchants to canvass" (see para. 91).

138. Both these proposals involved a major change of policy and were bitterly objected to by the merchants both inside and outside the Joint Committee and entered into the angry negotiations over the 1955 contract. In practice, as from 1956, the Board have allowed producers complete freedom to change subject only to the limitations that changes must be within geographical areas⁽¹⁾ small enough to make collection economic, that no agent is overloaded and that there should be no change in the case of a producer who has been dissatisfied over the valuation and has not succeeded in his claim before the valuation tribunal. Producers are not required to give reasons for their desire to change; their applications are considered by the Board, whose decision is conveyed to the producer and merchant simultaneously in February to take effect in May. The effect on the number of approvals and refusals can be seen from the following figures:—

		<i>Appeals to change</i>	<i>Appeals granted</i>
1952-1955 annual average of 4 years	...	332	168
1956-57 season	... ..	3,506	3,444
1957-58 season	... ..	2,271	2,237

We were informed that all applicants for change of merchant after the 1956 season had been invited, though not required, to give their reasons for asking for a change and that of the 875 applicants (or 39 per cent. of the total) who gave their reasons, 50 per cent. applied because the new merchant was nearer or more convenient, 20 per cent. to get better services, such as collection from the farm, opportunity to see weighing, etc., 9 per cent. because they had other business connections with the new merchant and 6 per cent. because they wished to join or were members of a wool growers' co-operative.

THE ARGUMENTS FOR AND AGAINST THE CHANGES MADE

139. The merchants argued with the Board and also before us that the new policies on change of merchant and canvassing represented a serious and unjustified threat to their security, that it was inequitable for merchants to be tied by contract to the Board and yet not be able to plan ahead on a steady throughput of clips, and unfair that producers should be free while merchants were obliged to take any clips allocated to them. They also argued that the new policies, and particularly freedom to canvass, would lead to wasteful forms of competition in unnecessary services, at worst to improper practices, such as over-valuation of clips, and at best to what they regarded as ungentlemanly behaviour—one merchant trying to steal customers from another—which they felt to be especially wrong between agents of the Board, who were giving definite services under a uniform contract with the Board. There was also an element of "the producers can't have it both ways"—control for the merchants and no control for the producers—and some feeling that the Board had broken faith with assurances given in their memorandum of January, 1953.

140. While we accept that all the above arguments have weighed with the complainants, we cannot but be conscious that the chief consideration

⁽¹⁾ The Board discussed the proposed areas with the merchants and accepted most of the merchants' suggestions for widening them.

influencing them is their fear that the co-operative merchants, whose organisation formally supported the Board against the private merchants on these issues, would use the offer of the dividend to attract custom away from the private merchants. The anxiety about canvassing appeared to be strongest in Scotland, where there is acute awareness of the growth of the business of the co-operative merchant, and where relations between the Board and the merchants have been at their worst. Witnesses speaking for the Wool Federation of Scotland clearly felt that the Board's new policy on change of merchant and canvassing had been influenced by the representations of the co-operative merchants and had been arrived at in the knowledge that it would benefit co-operative merchants at the expense of the private merchants.

141. The Board claimed that maximum freedom for producers to change their merchant was necessary both because producers wanted it and because it was consistent with "the current trend of less control over the individual", the strict control of the earlier days being a legacy from war-time conditions. They also considered that these new policies were necessary to introduce that element of competition amongst their agents which was needed to encourage increased efficiency, and to effect substantial savings in transport costs.⁽¹⁾ At first (in their memorandum of September, 1954) they proposed that merchants should compete by sharing their margin with producers, but later they withdrew this in favour of competition operating exclusively by the offer of improved services. They also stated that no evidence had been given that freedom to change had disturbed the economic balance of the merchants' business.

142. It appeared during the hearing that merchants were more strongly opposed to canvassing than to an extension of the right of producers to change their merchant. Their opposition to canvassing was unqualified but, in the letter sent by the British Wool Federation on 20th October, 1954, about the Board's September memorandum, the Federation said that they "appreciated the difficulties of the current situation" on change of merchant, and were prepared "to go into this very thoroughly with the Board". Moreover, in their final submission the complainants did not ask for any specific limitation of the reasons which producers may give for wishing to change their merchant, though they appeared to contemplate that reasons other than bad service would be allowed only on the recommendation of the Joint Committee.

143. The Board to some extent recognised the merchants' objections to canvassing. In the course of discussions during the winter of 1954-55, they agreed with the merchants that there were dangers in canvassing and that, in principle, there should be restrictions on it and in their second policy proposals sent out to the merchants' organisations on 6th December, 1954, they stated that "Restrictions on canvassing would have to be

⁽¹⁾ The Board claimed that, according to their estimate, the changes made in the 1956-57 season had saved over 100,000 miles in the transport of clips from producer to merchant. During any year these savings accrue to the individual merchant if he, and not the producer, is bearing the cost of transporting the wool from farm to warehouse, but the lower transport costs would no doubt be taken into account in assessing any changes in merchants' margins due to cost changes.

exercised". Their conclusion, conveyed to the merchants at the end of February, was—

- (a) that since no practical measures could be taken to police a restriction on canvassing activities, however desirable that might be, merchants should be free to canvass producers for clips; *but*
- (b) that the Board would not allow the costs of canvassing as a claim for remuneration, and would watch the situation carefully with a view to taking any necessary steps in the future to preserve efficient marketing.

144. The Board also recognised, in evidence given before us, that freedom to canvass might encourage the offer of services to producers which the Board would regard as unnecessary and therefore as wasteful. They felt, however, that some canvassing was proper and necessary if flexibility was to be introduced into the merchant trade and the producer's freedom to change his merchant made effective. They pointed to the actual reasons given for change of merchant (paragraph 138 above) as evidence that little, if any, improper canvassing had in fact been taking place. On the possible inequity of tying the merchant to accept any clip allocated to him, the Board said that there was a statutory obligation on the Board to accept any clip offered, and that it was therefore proper that their agents should accept a similar obligation. The Board had no evidence that merchants were unwilling to accept this obligation ⁽¹⁾, but if they were to be freed, it would be necessary for the Board both to maintain their own handling units in the various regions to take rejected clips, and to reconsider the level of merchants' margins.

145. It is proper to record that we were given no evidence of specific cases of "improper" canvassing⁽²⁾ and that the private merchants told us that, as a matter of policy, they neither canvass each other for clips nor encourage their "B" merchants to canvass, though there is competition between them for the producers' custom in other agricultural products. Also the representative of the English co-operative "A" merchants who gave evidence for the Board told us that, up to the present, they had not canvassed, although we gathered that they would probably do so now that they had acquired a larger warehouse.

CONCLUSIONS

146. The Board have always maintained the need for some change of merchant to ensure that producers' clips are collected from reasonably near at hand. But, until the Board's document of September, 1954, the merchants have had reason to expect the maintenance of a strict control of producers in the matter of change of merchant and of the prohibition of canvassing by the merchants. We think that the merchants are justified in saying that the memorandum of September, 1954, represented a complete change of policy on both these points. Indeed, the Board's chief witness

(1) In the few special cases which occurred the Board had been able and willing to arrange for a particular clip to be taken by another agent.

(2) The only case cited to us in evidence was that of a merchant who had succeeded in getting a clip from another merchant by offering to collect earlier. This was objected to by the complainants on the ground that earlier collection could only be made at the expense of other farmers.

agreed in evidence that this was so and that "the policy side [of the memorandum] would have created feeling whenever it had been issued". In all the circumstances, we think that the Board showed too little consideration for the merchants in their manner of putting forward their new policies.

147. Our conclusion on *change of merchant* is that producers' freedom ought to be limited only to the extent necessary for efficient collection of their clip. This seems to require only that sufficient notice of change should be given, and that the Board should be able to disallow cases where the change would involve excessive transport or where a valuation dispute was under appeal or had recently been refused. This is in line with the Board's present practice. We do not, however, think that it is right for the merchant to be left in ignorance of the fact that a client has applied to change to another merchant. We questioned the Board's chief witness on the reason for the present practice and were told that, if a merchant was informed of a producer's intention to change before a decision had been taken, he would canvass the producer, who might then change back; this was expected to create administrative difficulties. We do not think that these difficulties at all justify taking away from the merchant the right to learn as early as possible the possibility that he is to lose a client and the right to try to persuade that client to remain with him.

148. Accordingly, we recommend that, subject to the Board retaining power to disallow changes for the foregoing reasons, producers should not have to seek permission to change but only to notify their intention and

- (i) that twelve months' notice of intention to change to another merchant should be given to the Board by producers, and that the Board should advise both the merchants concerned on receipt of the notice; and
- (ii) that the notice should be given before 1st May of one year so as to be effective from 1st May of the next year and that the producer should be at liberty to withdraw the notice at any time up to the end of the calendar year in which the notice is given, the Board then advising both the merchants concerned.

We think that this would give enough notice to the merchant to enable him, if he so wishes, to try to persuade the producer to change his mind, and, if not, to alter his trading arrangements accordingly. We do not consider that the complainants' proposal for a tribunal is called for or that it would be necessary if some such arrangement as we have suggested is introduced.

149. With freedom on the part of producers to change their merchants, it seems to us necessary to accept *freedom for merchants to canvass*. The object of the Board is, so far as is consistent with the circumstances under which they operate, to allow competitive forces to influence the structure of the merchanting organisation as opposed to keeping it frozen. Canvassing represents one of the ways by which competitive forces work. It has bad features as well as good. Where there is no competition through the price mechanism in the ordinary sense, the role played by canvassing becomes more important than under normal competitive conditions, and its bad

features are liable to become more pronounced. Although it was pointed out to us that there was no evidence of harmful canvassing, it is relevant to note that, in fact, full scale canvassing has not been tried (see paragraph 145). But we agree with the Board that some canvassing is desirable and that it is not possible to discriminate between one kind and another, any more than in other spheres it is possible to rule out wasteful forms of competition without prejudicing the operation of competition itself. Further, we think that it is undesirable, unless on strong grounds of efficiency and so of practical public interest, that the Board should impose upon merchants a practice (prohibition of canvassing for custom) which, if reached and imposed by agreement between the merchants, would be a restrictive trade practice which might well be registrable under the Restrictive Trade Practices Act. Our conclusion is that the Board should not reimpose a ban on canvassing.

150. We find that the actions of the Board over canvassing and change of merchant have not been contrary to the reasonable interests of the members of the complainant organisations, save in regard to notification to merchants of proposed changes of merchant. We do not consider that the public interest requires that the present arrangements should continue in this latter respect. We therefore recommend that amendments should be made as outlined in paragraph 148.

ADDITIONAL "A" MERCHANTS

151. This is perhaps the place at which to draw attention to an aspect of the arrangements made by the Board for handling the clip which has not been a matter of complaint to us but on which we think it right to observe.

152. In their memorandum of January, 1953, on the future of merchants, the Board referred to the possibility that at some time additional "A" merchants might be needed but added that "B" merchants and others should not apply to be accepted as such "unless the Board has decided that the efficiency of the Scheme requires a new unit in any area". In fact, the Board have assisted the establishment of two additional "A" merchants, one (a Co-operative) in Northern Ireland, where previously there was only one "A" merchant, and one (a private merchant) in Wales, which was formerly largely served by Bradford merchants. In the course, however, of the discussions leading up to the signature of the present five-year contracts, the Board gave assurances to all the private merchant organisations that they would not invite applications for additional "A" merchants (or themselves set up new handling units) during the present contract period provided the whole clip was handled under the five-year contract (see paragraph 162). In pursuance of these assurances, the Board have refused two requests from firms wanting to become "A" merchants (see paragraph 117).

153. The total number of "A" merchants has decreased since 1950 from 128 to 113, although there has been a considerable increase in the total clip. While it does not appear that the Cost Survey conclusively supported the Board's view that small clips are less economic than large clips

for the merchant to handle, the Board have stated in evidence that they consider larger clips to be more economic when it comes to selling the clip, whether or not they are so for the merchant collecting it.⁽¹⁾ The Board therefore aim at a further reduction in the number of "A" merchants.

154. There is always a danger that rationalisation to produce economies of scale may prevent or discourage new entrants. In the present instance there clearly is this danger. We particularly asked the Chairman of the Board to give evidence on the attitude of the Board to the introduction of new merchants and his reply was that "the Board's attitude is that no one should be excluded from acting as a merchant . . . provided that he is capable of doing so properly at a reasonable fee and handles a fair quantity of wool . . . At the same time . . . the Board would consider a reduction in the present number of merchants to be advantageous . . ." Further, the Board are excluding new merchants altogether during the current five-year contract period and the Board's Manager/Secretary agreed, in answer to our questions, that it was very difficult to provide for new blood to come in under the present system. The danger, or at least the difficulty, was recognised even by the private merchants, one of whose chief witnesses agreed that "the trade is more or less a closed shop . . . but there seem to be sufficient merchants to handle the wool and I just do not know how you can get over that difficulty . . ." While, however, admitting that there could be circumstances in which it would be right to admit new "A" merchants, the merchants clearly felt that this should only be done in relation to quite new business, and in consultation with the Joint Committee.

155. In several published reports, the Monopolies Commission have recorded their view that it is in the public interest that there should be freedom of entry into a trade or business, and we note that in their report on the Cables industry, they specifically recommended the G.P.O. (who rationalised the production of telephone cable by reducing the number of makers) to "leave itself free in future to place a proportion of orders with independent concerns".⁽²⁾ We think it is in the public interest that the Board should have in mind, in the arrangements which they make for the collection and handling of the United Kingdom clip, not only the value of calculable economies but also the importance of making some provision for new entrants.

(C) DIRECT HANDLING BY THE BOARD

COMPLAINT

156. In paragraph 26 (3) we have defined the complaint under this head in the following terms:—

"The act of the Board in setting up an experimental handling unit at Oak Mills, Bradford, contrary to the recommendations of the trade members on the Joint Committee."

⁽¹⁾ The Chairman of the Board said that a small agent takes a long time to accumulate enough wool to make up sale lots and that small agents involve the Board appraisers in extra travelling.

⁽²⁾ Para. 295 of the Report of the Monopolies and Restrictive Practices Commission on the supply of electric wires and cables dated 25th April, 1952.

157. As has already been stated, the Board have powers under the Scheme to handle wool themselves. Their memorandum "Policy for the Future—Merchants" issued in January, 1953, included the following statement:—

"The Board is convinced that economy and efficiency in the handling of wool can best be maintained and improved through a development of the present system of employing authorised merchants to carry out the physical processes concerned. There appears to be no economic justification for the Board taking over the present functions of 'A' merchants (except perhaps in isolated cases as a yard-stick of costs, but even this seems most improbable as other yard-sticks are available)."

158. Up to 1955 the Board had never themselves handled producers' wool. Towards the end of January in that year one of their agents in Cumberland notified the Board that he wished to give up part of the clips allocated to him. The situation was considered by the Board on 15th February, 1955, and it was decided provisionally to take over the clips and start an experimental handling unit at the Board's premises at Oak Mills, Bradford, which up to that time had been used only for such purposes as storing and exhibiting wool.

159. A reference to the proposal to set up such an experimental unit was included in the agenda for the Joint Committee meeting on 23rd February, 1955. At this meeting the Board's Manager/Secretary explained that the quantity of wool which the Board proposed to handle was about 185,000 lbs. weight, and that the object of the proposal was to enable the Board to acquire some experience of the problems which merchants themselves had to face; to ascertain the costs of the various processes involved and to see if means could be found through suitable mechanical aids to reduce them; it would give some insight into the problem of apportioning costs; and practical experience would be gained on organisation, collection procedure, utilisation of agents in the field, and transport and warehousing of wool; the Cost Survey had not provided the yard-stick of costs which the Board had expected.

160. The proposal was unanimously opposed on the Joint Committee by the merchants' representatives, who protested also at the short notice given concerning what they regarded as a major change in policy; they questioned the need for the proposed unit and they deprecated the Board's proposal at this particular time when unhappy relations already existed between the Board and the merchants over the Cost Survey and contract negotiations. We note that the Co-operative organisation also asked for an assurance from the Board that the handling unit would not be expanded beyond a certain quantity, say half a million lb.

161. The Board decided, on the day following the meeting of the Joint Committee, to set up the handling unit and they commenced operations at the beginning of the 1955-56 clip year. As a result of producers exercising their freedom of choice of merchant, the amount of wool handled by the Board has been reduced from 185,000 lbs to 140,000 lbs.

162. In March, 1955, before the contract forms were sent out to individual merchants, the Wool Federation of Scotland asked the Board for an assurance

that they would not set up handling units in Scotland. In reply the Board gave an assurance to the effect that they would not do so, so long as all Scottish wool was being handled efficiently by merchants on the proposed five-year contracts. Nevertheless, in the explanatory memorandum sent out by the Board to individual merchants on 16th March, 1955, with the offer of the alternative forms of contract, it was indicated (see para. 105) that the Board might have to consider *inter alia* whether a handling unit should be set up in a particular area, if sufficient merchants did not take up five-year contracts to enable the United Kingdom clip to be handled efficiently and economically. Similar assurances to those given to the Wool Federation of Scotland, i.e. that the Board would not itself set up handling units so long as the wool was being handled efficiently by merchants on the five-year contracts, were subsequently given to all the merchant organisations.

THE COMPLAINANTS' CASE

163. The trade had been presented with a virtual "fait accompli" over the setting up of the experimental handling unit and representatives were given insufficient time to consult their organisations before the Joint Committee meeting. The merchant organisations considered it a major change from the policy set out in the 1953 policy statement and were concerned about the proposal because they feared that the unit might prove to be "only the thin end of the wedge". During the course of the hearing it was indicated that the complainant organisations were now less concerned about the establishment of the particular experimental unit at Oak Mills as one of their complaints as it had rather lost its impact. They were, however, still apprehensive in case the Board should decide to handle wool on a larger scale. They maintained that it was wrong for the Board to handle wool in competition with the merchants while the agency contract was so short, and that the fear of a further development of this kind had discouraged merchants from making improvements to their businesses. It was urged that the unit should be limited strictly to "non-commercial" activities. It was also maintained that a unit of the size of Oak Mills did not provide a good yard-stick of costs; nor was it comparable with a merchant's premises because the Board had no problem of shortage of space.

THE BOARD'S REPLY

164. The Board did not consider the establishment of a handling unit at Oak Mills to be a major change of policy. It had always been envisaged that perhaps one day the Board would wish to have a yard-stick of costs on the lines described in the 1953 policy statement (see para. 84). They did not say that this would not be desirable although they did say that it was not probable.

165. Although the Board had in mind the possibility of setting up a handling unit they did not actively consider the proposition until the end of January, 1955, when the merchant in Cumberland notified the Board that he wished to give up part of his handling.

166. It was admitted that the proposals arose at an unfortunate time when the relations between the Board and the merchant organisations were bad, but another opportunity was unlikely to occur.

167. Although the unit was small and below the average in size (there were, however, 30 firms which handled less) it had not been uneconomic. In fact it had represented a saving in marketing costs to the Board, who would have had to pay out more in merchants' remuneration than in the costs of the unit. While in size the unit was not typical, very many of the problems were the same and the unit did give a reliable picture. Experience of the costs of the unit had been used as a check on unnecessary payments to sub-agents and had shown that this part of the work could be done at much lower costs by not employing such sub-agents. Experience of the unit had also shown that the rate of remuneration offered to agents was adequate. In spite of its small size, the unit had made a reasonable profit on a fair apportionment of costs made by the professional accountant on the Board's staff.

168. The Board's Chairman, in cross-examination, said he thought that the Board would like to have further experimental or handling units in other areas, not necessarily so small as Oak Mills. It would be an ideal at which to aim, though not necessarily to attain. About half a million lb. weight was the average amount handled by agents and would be a reasonable size for a unit.

169. The Board could displace the merchants, but that was not their policy and they had never considered taking over from them altogether, save as a temporary measure in the case of the possible refusal of the Scottish merchants to handle the 1955 clip (see para. 102). This had been fairly specifically stated in the Board's letter of 11th March, 1955, giving assurance on the subject.

170. The Board had a duty to see that wool was collected as economically and as efficiently as possible. This was not stated in the Scheme, but efficiency in marketing was the whole object of such marketing schemes. Nor was it laid down in the Scheme or in the Acts what were the methods whereby wool was to be collected and graded for marketing; the Scheme gave the Board power to choose their own means. The Board had done nothing contrary to the interests of merchants in establishing the Oak Mills unit and there was no reason why the Board should not be allowed to establish an experimental depot on a larger scale. The Board maintained that they should be free to choose the best and most economic way of handling wool. If the merchants provided the best way of doing this then no doubt the Board would continue to employ them; but if the merchants demanded unreasonable remuneration, or through inefficiency were unable to do the job at a reasonable rate, then it would be the Board's duty to see if there were any more efficient way of collecting wool and to consider whether they themselves ought not to collect it.

171. In their documents the complainants had sought to be protected for the statutory life of the Board, although they had said in evidence that they meant only some such period as corresponded with the guarantee arrangements between the Board and the Government. They were really seeking to be free from all commercial risks in their dealings with the Board. To prevent the Board from handling producers' own wool with the object of protecting merchants was against the public interest and would give the merchants an overweening strength in negotiation.

172. We are clear that the opportunity to set up the handling unit at Oak Mills came at an unfortunate time from the point of view of relations between the Board and the merchants. We also think that the Board can be criticised for using the threat of establishing further handling units to press the acceptance of the five-year contract upon individual merchants (see para. 105). Nevertheless, we do not consider that the action of the Board in setting up the experimental handling unit at Oak Mills was contrary to the reasonable interests of the merchants. Moreover, we consider it is in the public interest that the Board should be free to set up experimental units, and it is right that the Board should acquire practical knowledge of the services which they require their agents to perform. We are also of the opinion that they should be able to supply those services if for any reason they cannot get them performed in any area with reasonable efficiency or on reasonable terms, or have difficulty in getting them performed at all.

Part VI.—The General Relationship between the Board and their Agents

173. We have already referred (in paragraph 26) to the suggestion made by Counsel for the complainants that the individual acts or omissions of the Board complained of might well be regarded as part of a pattern of conduct of the Board which produced a situation prejudicial to the interests of the merchants. Although we have felt obliged to deal first with the specific topics under complaint, we consider it right that we should deal with the wider concept of the complaints as affecting the general relationship between the Board and the merchants.

174. First it may not be out of place to review briefly the general tenor of the relations in recent years. It is clear to us from the evidence we have received that the general relationship between the Board and the merchant organisations was reasonably good up to the autumn of 1954. There does, however, appear always to have been some resentment among the merchants at their loss of status following the inception of the Marketing Scheme. Although this matter is not directly related to the complaints, it was mentioned during the hearing and we think it worth emphasising that the merchants, in fact, lost their independent status when Government control started during the war and that Parliament confirmed this state of affairs when, in 1950, they approved the present Marketing Scheme as a system of organised marketing: in decreeing the organised sale of wool, Parliament necessarily decreed the disappearance of the first-instance purchaser, the individual merchant who used to buy wool on his own account from the individual farmer. While it is natural that all merchants should not welcome the change of status, it is to be hoped that they will now be prepared to accept it.

175. It was during the last quarter of 1954 and the first quarter of 1955 that the relationship between the Board and the representatives of the private merchants deteriorated seriously. Relations with the Wool Federation of Scotland became particularly bad, and at the end of February, 1955, it

appeared as though the Scottish merchants might go so far as to refuse to handle the coming 1955 clip. The representatives of the Federation were certainly outspoken in their statements and appear to have taken a leading part in the opposition by the private merchant organisations to the Board's proposals, particularly as relating to the agency contract.

176. The private merchant organisations appear to have been unanimous in thinking that the Board were unreasonable and dictatorial, at least over the 1954-55 contract negotiations. On the other hand, it was contended on behalf of the Board that the merchants, particularly the Wool Federation of Scotland, had not been as reasonable as they might have been. While feelings may have moderated somewhat since the worst period in early 1955, we think that there is a very real possibility of further deterioration in the not so distant future as the end of the present five-year contracts draws near. In brief, we have gained the impression that there is a state of near armed neutrality, at least so far as the complainant organisations are concerned.

177. We do not wish here to attempt to apportion the blame for this unsatisfactory state of affairs. We think it sufficient to emphasize that as a statutory body with extensive powers of a monopolistic kind, there is a special obligation on the Board not only to act reasonably and fairly, but also to take particular care to appear to do so. While such a standard of conduct is proper to all bodies exercising monopoly powers, we consider it especially important where these powers are statutory.

178. In our view, in their conduct towards their agents, the Board should keep two considerations carefully in mind. First, they should give full and proper consideration to the views of the merchants acting as their agents; and secondly, in the exercise of their duties they should be careful to avoid conduct and courses of action which might reasonably be construed as attempts to exploit their monopoly powers unfairly and at the expense of their agents. As will be clear from our Report, we are not convinced that the Board have always given proper consideration to the views of the merchants. We do not seek to criticise the 1955 contract itself or the decision to allow freedom for producers to change their merchant and for merchants to canvass for custom, or the decision to establish an experimental handling unit. But in each case we have found it necessary to criticise the way in which the Board have introduced and carried out their policies. We also have in mind the fact that, since the new Financial Agreement, the Board are demonstrably the only arbiters in a case in which they (as representing the producers) have a direct financial interest, whereas previously the Government may have been felt to have an interest (see para. 128). In the light of these considerations we conclude that there is a case, on this matter of remuneration and on this point alone, for some form of appeal to a third party in the event of a disagreement (see para. 181 below).

179. In addition to the question of equity, there is an economic argument which must have a close bearing on the Board's attitude. If producers wish to retain the services of the best elements amongst the merchants, they will need to offer them sufficiently attractive conditions and prospects to persuade them to continue as their agents. If producers cut the rates of remuneration too fine, or introduce other harsh conditions of employment, then they may well find that they have made a stick for their own backs—as a representative

of the Co-operative merchants said during one of the meetings with the Board in early 1955. Whilst a movement by merchants out of the trade may not necessarily be harmful, a general lowering of the standard of efficiency in the industry would result if it were the more energetic and enterprising firms which left it.

ARBITRATION

180. In their final submission to us (doc. 10 of Appendix I), the complainant organisations sought an amendment to the Scheme to give them the right of appeal to arbitration in any dispute over the acts or omissions of the Board which they regard as contrary to the interests of their members. We do not consider that such a provision would be justified, whatever the correct view as to the legal authority of such a provision; the complainants have made it clear that they would want to be able to refer to an arbitrator any matter at all on which they differed from the Board and, notwithstanding the argument made by Counsel (see paragraph 29), we consider that in practice this would amount to making the arbitrator decide policy for the Board on many important matters. Parliament has placed on the Board the responsibility for administering the Scheme and we do not think it right that this responsibility should be shared with an arbitrator. On the other hand Parliament has not examined the Scheme as a whole since the negotiating position of the merchant was materially altered by the Financial Agreement of 1955 (see paragraphs 56, 128 and 178) and we think there is a strong case for changes in relation to the negotiation and settlement of remuneration rates. We deal with this matter in the following paragraphs.

AN ALTERNATIVE REMEDY

181. We find that the existing arrangements for the conduct of negotiations between the Board and the merchant organisations are defective in certain respects; that they are contrary to the reasonable interests of the members of the complainant organisations and that the public interest does not require that these arrangements should be retained without modification. But in our view the need to remedy these defects calls for a less sweeping remedy than that sought by the complainants. First, we do not consider that the Joint Committee provides a satisfactory forum for negotiation between the Board and their agents on remuneration rates, since other interests are represented on this Committee; instead, we think that the Scheme should make specific provision for a special committee to deal with merchants' remuneration. In practice both the Board and the merchant organisations appear to be in agreement on the unsuitability of the Joint Committee for negotiations on remuneration rates, although, in fact, the agency contracts often came up at the Joint Committee if, but only if, one of the regular quarterly meetings happened to be held on a date convenient for carrying on discussion between the parties (see para. 77). Secondly, we consider that provision should be made in the Scheme for enlisting the good offices of an independent person who would act as a Consultant and help the two sides to resolve any differences that arise over the amount to be paid to merchants by way of remuneration. We think this provision is desirable both for the reason given at the end of paragraph 178 above.

and because the bitterest differences between the two sides have occurred over the rates of remuneration. The Board must decide, after consultation with the Joint Committee so far as necessary, what tasks their agents should be required to undertake, and the final decision on the remuneration which they will pay for these tasks must rest with them unless they voluntarily agree otherwise in any particular case, but we believe that a Consultant would be able to help the parties to reach agreement.

182. We therefore recommend that, so long as merchants' remuneration is arrived at after discussion between the Board and the merchant organisations, the Scheme should be amended in the following manner.

- (a) Provision should be made for a separate Committee to be a forum solely for negotiation between the Board and the merchant organisations on the amount to be paid to merchants by way of remuneration. There should be a representative on the Committee of each of the merchant organisations recognised by the Board as representing the interests of the merchants.
- (b) The Scheme should also provide that if there is disagreement on this Committee, then either the Board or any of the merchant organisations represented on the Committee should be entitled to refer the matter in dispute to a Consultant to be appointed by the Committee or, failing agreement, by the Ministers.

Part VII.—Summary of Conclusions and Recommendations

REMUNERATION DISPUTES 1953-55

183. We have defined the complaint under this head in paragraph 26 (1) in the following terms :—

"The alleged arbitrary conduct of the Board during and after the negotiations on the contract, and in particular their action in offering to individual merchants, contrary to the wishes and contentions of the complainant organisations, either a one-year contract subject to such terms as were alleged to make its acceptance tantamount to commercial suicide, or a five-year contract at rates representing a 10 per cent. reduction on existing rates of remuneration."

184. The history of the negotiations shows in our view that the five-year contract with its reduction in margins, although valid in law, was virtually imposed upon the merchants ; that this was done with undue haste in relation to the time which might reasonably be expected to elapse for negotiations on remuneration following a Cost Survey ; that there was confusion as to the use to which the Cost Survey was to be put ; and that throughout the negotiations the Board adopted too rigid an attitude towards the merchants. (Paragraph 124.)

185. We do not think that it was contrary to the reasonable interests of the merchant members of the complainant organisations that the Board should offer to individual merchants a contract which had not been agreed beforehand between the Board and the complainant organisations. While

there should be full consultation with the merchant organisations on matters which concern them we are of the opinion that it would be contrary to the public interest for the Board to be bound to obtain the agreement of any or all of the merchant organisations before offering a contract to individual merchants. Further, we do not think that the reasonable interests of the merchants necessarily require that their average remuneration should be arrived at by the traditional method of estimating their average costs and adding an allowance for profit, and we consider that the Board must be free to abandon this traditional approach to remuneration, if they feel it to be inappropriate to present circumstances. (Paragraph 125.)

186. We find it difficult to contemplate circumstances (excluding fraud or duress) in which the offer of a contract, irrespective of its terms or the manner in which it was offered, could be held to be contrary to the reasonable interests of the person to whom it was offered (paragraph 126). We have reached this conclusion solely on legal grounds and not without reluctance as we deprecate both the method and the precipitancy of the Board in the contract negotiations and we are of the opinion that in some of the matters set out in paragraph 124 the conduct of the Board is open to serious criticism, and in respect of the explanatory memorandum (see paragraphs 105 and 127), perhaps even to censure.

187. We do not recommend the re-opening of the negotiations on the contract remuneration rates as sought by the complainants. (Paragraphs 130-131.)

CHANGE OF MERCHANT AND CANVASSING

188. We have defined the complaint under this head in paragraph 26 (2) in the following terms:—

“The granting of greater freedom for producers to change their merchant and the removal of the ban on canvassing by merchants.”

189. We find that the acts of the Board over changes in the arrangements as regards freedom for producers to change their merchant and freedom for merchants to canvass producers' clips were contrary to the reasonable interests of the members of the complainant organisations only to the extent that merchants are left in ignorance of producers' applications to change to another merchant; we do not consider that the public interest requires that the present arrangements should continue in this latter respect. (Paragraph 150.)

190. We recommend, therefore, (paragraph 148) that arrangements should be made so that:—

- (a) twelve months' notice of intention to change to another merchant should be given to the Board by producers, and the Board should advise both the merchants concerned on receipt of the notice;
- (b) the notice should be given before 1st May of one year so as to be effective from 1st May of the next year, and the producer should be at liberty to withdraw the notice at any time up to the end of the calendar year in which the notice is given, the Board then advising both the merchants concerned accordingly.

DIRECT HANDLING BY THE BOARD

191. We have defined the complaint under this head in paragraph 26 (3) in the following terms :—

"The act of the Board in setting up an experimental handling unit at Oak Mills, Bradford, contrary to the recommendations of the trade members on the Joint Committee."

192. We find that the action of the Board in setting up the experimental handling unit at Oak Mills, Bradford, was not contrary to the reasonable interests of the members of the complainant organisations, and we recommend that no action be taken as regards this complaint. Moreover, we consider that it is in the public interest that the Board should be free to set up experimental units, and it is right that the Board should acquire practical knowledge of the services which they require their agents to perform. We are also of the opinion that they should be able to supply these services if for any reason they cannot get them performed in any area with reasonable efficiency or on reasonable terms, or have difficulty in getting them performed at all. (Paragraph 172.)

ADDITIONAL "A" MERCHANTS

193. Although this was not a matter raised in the complaints, we think it right to state that we consider that it is in the public interest that the Board should in future make some provision for the admission of new agents. (Paragraph 155.)

GENERAL RELATIONSHIP BETWEEN THE BOARD AND THEIR AGENTS

194. We find that the existing arrangements for the conduct of negotiations between the Board and the merchant organisations are defective in certain respects; that they are contrary to the reasonable interests of the members of the complainant organisations and that the public interest does not require that these arrangements should be retained without modification. (Paragraph 181.)

195. We consider that the Scheme should make specific provision for a special Committee for negotiation between the Board and the merchant organisations concerning the amount to be paid to merchants by way of remuneration and for enlisting the good offices of an independent person who would act as a Consultant and help the two sides to resolve any differences that arise. (Paragraph 181.)

196. We do not, however, recommend that the Scheme be amended so as to provide a right to appeal to arbitration for the merchant organisations in any dispute between them and the Board. (Paragraph 180.)

197. Instead, we recommend that, so long as merchants' remuneration is arrived at after discussion between the Board and the merchant organisations, the Scheme should be amended in the following manner. (Paragraph 182.)

- (a) Provision should be made for a separate Committee to be a forum solely for negotiation between the Board and the merchant organisations on the amount to be paid to merchants by way of remuneration.

There should be a representative on the Committee of each of the merchant organisations recognised by the Board as representing the interests of the merchants.

- (b) The Scheme should also provide that if there is disagreement on this Committee, then either the Board or any of the merchant organisations represented on the Committee should be entitled to refer the matter in dispute to a Consultant to be appointed by the Committee or, failing agreement, by the Ministers.

198. We desire to express our thanks to our Secretary, Miss W. M. Drake, who has discharged her exacting duties with efficiency and zeal and has shown throughout a constant courtesy and readiness to help the Committee and its members. We are also grateful for much help given to us by our Assistant Secretary, Mr. R. A. Fasken, especially in regard to the viewings in Scotland and Northern Ireland. Finally, we may be permitted to record the thanks we owe to Mr. M. M. A. Gray of the Ministry of Agriculture, Fisheries and Food, who has been most helpful in placing at our disposal at all times his knowledge and experience of the statutory provisions and marketing arrangements generally.

We have the honour to be, Sirs,

Your obedient Servants,

RICHARD O'SULLIVAN (*Chairman*).

S. A. BOYD.

E. W. CRAIG.

R. F. KAHN.*

ALIX MEYNELL.*

JOHN RYAN.

W. M. DRAKE (*Secretary*).

R. A. FASKEN (*Assistant Secretary*).

9th July, 1958.

Note of Reservation to Paragraphs 126 and 186

Our terms of reference require us to report, of the actions complained of, whether they are contrary to the interest of persons affected by the Scheme (that is the merchants), and whether they are against the public interest. This we think takes us beyond the purely legal view that, if a contract is accepted, it cannot be contrary to the reasonable interests of those to whom it is offered. In our view it was contrary to the reasonable interests of the merchants for the five-year contract to be virtually imposed upon them in the manner, and with the speed, described in paragraph 124 of the Report. Furthermore, we do not think that the public interest required the Board to act as they did.

R. F. KAHN.

ALIX MEYNELL.

9th July, 1958.

* Signed subject to the Note of Reservation.

*Letter of Complaint from the Country Wool Merchants
Association to the Minister of Agriculture, Fisheries
and Food*

29, Meadow Road,
London, S.W.8

11th January, 1957.

The Minister of Agriculture, Fisheries and Food,
Whitehall Place,
London, S.W.1.

Sir,

[1.] I have been instructed by the Country Wool Merchants Association which represents 80 per cent. of the authorised wool merchants in England to make an official complaint concerning the operation of the Scheme constituted by the British Wool Marketing Scheme (Approval) Order, 1950, and to request that a Committee of Investigation shall be directed to consider such complaint.

[2.] The Association has become increasingly aware during the last two years of the existence between the British Wool Marketing Board and authorised merchants of disputes and differences, directly related to the operation of the Scheme, which have multiplied in number and complexity. When unresolved by negotiation they either remain as matters of contention, aggravating the relationship of the Board and the merchants, or become subject to the unilateral decision of the Board which is administratively enforced, and in respect of which no merchant has any effective right of challenge or appeal.

[3.] It may be accepted that the Scheme cannot be operated without the merchants who, as the Board's agents, collect, handle, pack and grade the wool. The type of function discharged by the wool merchant—perpetuating a very ancient trading tradition—is without any real analogy in any other marketing scheme. Because of the diversity of the services rendered, the widely different geographical conditions in which such services are given and the complex of trading units providing the services—ranging from single proprietors to partnerships and limited companies—it is inevitable that from time to time, legitimate disputes and differences must arise between collective bodies representing merchants and the Board. Yet though provision is made by Article 90 of the British Wool Marketing Scheme (Approval) Order, 1950, for any producer who is aggrieved by any act or omission of the Board to refer the matter to the arbitration of a single arbitrator, no like provision is made in respect of the merchant.

[4.] The absence of arbitration machinery has, in the view of the Association, directly contributed to the present accumulation of disputes and differences between merchants and the Board. This situation has undoubtedly caused a serious deterioration in the relations of the Board and the merchants. Unless it is arrested and in due course mitigated the efficiency of the Scheme will be imperilled.

[5.] The Association is unable to accept that the Advisory Committee constituted under paragraph 33 of the Order—known as the Joint Committee—is an effective body for the purpose of resolving disputes. The Joint Committee provides a forum for the ventilation of differences—mainly concerned with matters of policy—but its functions are advisory only. Though persuasive in character, the recommendations of the Joint Committee do not carry any executive sanction. Moreover, it is the fact that on numerous occasions the

Board has disregarded the recommendations of the Joint Committee and acted to a contrary intent. The Association considers that the Joint Committee serves a useful purpose and does not suggest that its constitution should be amended. It is, however, urged that there does exist a wide area of potential dispute wholly beyond the power of the Joint Committee to determine.

[6.] The main, though not the only, issue in continuing dispute between the Board and the authorised merchants concerns the basis upon which proper allowances and a fair rate of payment for the services rendered by the merchants shall be calculated. Numerous attempts, involving protracted negotiations, have failed to produce an agreed formula.

[7.] In 1953 it was agreed by the Association at the request of the Board that there should be a Costings Inquiry with the intention that a formula should be defined upon which an average rate of remuneration could be based. The Inquiry proceeded at considerable expense but was never concluded because differences arose (which have never been acceptably resolved) with reference to the method of computing three essential major items, namely :

- (a) The amount of the commission to be allowed for agents (i.e. "B" and "C" merchants) employed by the authorised merchants.
- (b) The remuneration to be allowed for work personally undertaken by proprietors and directors in connection with management, administration, handling and grading.
- (c) The margin of profit.

[8.] In the events that subsequently transpired the inconclusive nature of the costs investigation did not deter the Board from acting unilaterally in entire disregard of the wishes and contentions of the merchants. Without any prior intimation to the merchants or any discussion with the bodies representing them, the Board in February, 1955, announced its intention to offer alternative forms of contract effective as from the 1st May, 1955.

[9.] Drafts of the forms of contract offered were not made available to the Association until the 8th March, 1955. Two forms of contract were offered : one for a single year and the alternative for five years. The terms of the single year contract were such that acceptance would virtually have involved the merchant in commercial suicide. As regards the alternative form of contract the Board arbitrarily fixed a rate which represented a 10 per cent. reduction on the rate paid for each of the previous four years completely disregarding the obvious and undeniable increase in costs that had taken place.

[10.] The circumstances in which the alternative forms of contract were offered, the insecurity and uncertainty of tenure reflected by the Board's attitude, the absence of agreement on the terms of payment and the conditions under which producers could change merchants and merchants could canvass one against the other, coupled with the necessity of signing the form of agreement on or before the 1st May, combined to oblige individual members of the Association to inform the Board by covering letter when signing the form of contract that he did so under protest and on the understanding that the terms of the contract would be reopened and be subject to negotiation between the Association and the Board.

[11.] A commercial agreement would, of course, be nullified if one of the contracting parties signed under protest ; indeed, it is scarcely conceivable that such an occasion would arise. The Association is quite unable to appreciate why its members in their contractual relations with the Board should be deprived of the ordinary rights and freedom of action accorded by law and practice to a contracting party. The Association considers that the situation created by the Board is not merely contrary to the public interest but wholly repugnant to it.

[12.] Since the form of agreement was signed in the circumstances described, attempts to amend the form of agreement in terms acceptable to the merchants have proved substantially abortive. The consequence is that the merchants have been operating and continue to operate under sanctions imposed by the Board which they do not accept and to which they do not subscribe.

[13.] Accordingly, the Association asks that a Committee of Investigation be directed to investigate the position with the following terms of reference:

- (a) To review the relations between the Board and the authorised merchants for the purpose of defining.
- (i) The services to be rendered by the authorised merchants and the allowances to be made to them.
 - (ii) The services to be rendered by merchants who are not authorised and the allowances to be made to them.
 - (iii) The length of tenure to be given to authorised merchants in their employment by the Board.
 - (iv) The scope of the services to be rendered by the Board in the collection, packing and grading of wool.
 - (v) The conditions upon which merchants may canvass and producers can change from merchant to merchant.
- (b) To consider the desirability of defining a formula upon which the rate of remuneration payable by the Board to the authorised merchant shall be based and to make all necessary recommendations.
- (c) To consider the desirability of making an amendment in the Scheme to provide for the reference to a single arbitrator for final determination of all disputes between the Board and the authorised merchants and to make all necessary recommendations.

[14.] I am directed to add that the Association in requesting an investigation is acting in full co-operation with the Wool Federation of Scotland, which is addressing a similar application to the Secretary of State for Scotland.

Yours faithfully,

For and on behalf of,
The Country Wool Merchants Association.

(Sgd.) A. W. D. MCINTYRE,
President.

Doc. 2.

*Letter of Complaint from the Wool Federation of Scotland to
the Secretary of State for Scotland*

GRAHAMS, RINTOUL, HAY, BELL & Co.,
Chartered Accountants,
105, St. Vincent Street,
Glasgow, C.2.

11th January, 1957.

The Secretary of State for Scotland,
St. Andrew's House,
Edinburgh, 1.

SIR,

Wool Federation of Scotland

[1.] I have been instructed by the Wool Federation of Scotland, which represents the majority of authorised wool merchants in Scotland, to make an official complaint concerning the operation of the Scheme constituted by the British Wool Marketing Scheme (Approval) Order, 1950, and to request that a Committee of Investigation shall be directed to consider such complaint.

[2.] The Federation has become increasingly aware during the last two years of the existence between authorised merchants and the British Wool Marketing Board of disputes and differences directly related to the operation of the Scheme which have multiplied in number and complexity. When unresolved by negotiation, they either remain as matters of contention, aggravating the relationship of the Board and the merchants or become subject to the unilateral decision of the Board, which is administratively enforced, and in respect of which no merchant has any effective right of challenge or appeal.

[3.] It may be accepted that the Scheme cannot be operated without the merchants who, as the Board's agents, collect, handle, pack and grade the wool. The type of function discharged by the wool merchant—perpetuating a very ancient trading tradition—is without any real analogy in any other marketing scheme. Because of the diversity of the services rendered, the widely different geographical conditions in which such services are given and the complex of trading units providing the services—ranging from single proprietors to partnerships and limited companies—it is inevitable that from time to time, legitimate disputes and differences must arise between collective bodies representing merchants and the Board. Yet though provision is made by Article 90 of the British Wool Marketing Scheme (Approval) Order, 1950, for any producer who is aggrieved by any act or omission of the Board to refer the matter to the arbitration of a single arbiter, no like provision is made in respect of the merchant.

[4.] The absence of arbitration machinery has, in the view of the Federation, directly contributed to the present accumulation of disputes and differences between merchants and the Board. This situation has undoubtedly caused a serious deterioration in the relations of the Board and the merchants. Unless it is arrested and in due course mitigated, the efficiency of the Scheme will be imperilled.

[5.] The Federation is unable to accept that the Advisory Committee constituted under paragraph 33 of the Order—known as the Joint Committee—is an effective body for the purpose of resolving disputes. The Joint Committee provides a forum for the ventilation of differences—mainly concerned with matters of policy. But its functions are advisory only. Though persuasive in character, the recommendations of the Joint Committee do not carry any executive sanction. Moreover, it is the fact that on numerous occasions the Board has disregarded the recommendations of the Joint Committee and acted to a contrary intent. The Federation considers that the Joint Committee serves a useful purpose and does not suggest that its constitution should be amended. It is, however, urged that there does exist a wide area of potential dispute wholly beyond the power of the Joint Committee to determine.

[6.] The main, though not the only, issue in continuing dispute between the Board and the authorised merchants concerns the basis upon which proper allowances and a fair rate of payment for the services rendered by the merchants shall be calculated. Numerous attempts, involving protracted negotiations, have failed to produce an agreed formula.

[7.] In 1953 it was agreed by the Federation at the request of the Board that there should be a Costings Inquiry with the intention that a formula should be defined upon which an average rate of remuneration could be based. The Inquiry proceeded at considerable expense but was never concluded because differences arose (which have never been acceptably resolved) with reference to the method of computing three essential major items, namely:

- (a) The amount of the commission to be allowed for agents (i.e. "B" and "C" Merchants) employed by the authorised merchants.
- (b) The remuneration to be allowed for work personally undertaken by proprietors and directors in connection with management, administration handling and trading.
- (c) The margin of profit.

[8.] In the events that subsequently transpired, the inconclusive nature of the costs investigation did not deter the Board from acting unilaterally in entire disregard of the wishes and contentions of the merchants. Without any prior

intimation to the merchants or any discussion with the bodies representing them, the Board in February, 1955, announced its intention to offer alternative forms of contract effective as from the 1st May, 1955.

[9.] Drafts of the forms of contract offered were not made available to the Association until the 4th March, 1955. Two forms of contract were offered: one for a single year and the alternative for five years. The terms of the single year contract were such that acceptance would virtually have involved the merchant in commercial suicide. As regards the alternative form of contract the Board arbitrarily fixed a rate which represented a 10 per cent. reduction on the rate paid for each of the previous four years, completely disregarding the obvious and undeniable increase in costs that had taken place.

[10.] The circumstances in which the alternative forms of contract were offered, the insecurity and uncertainty of tenure reflected by the Board's attitude, the absence of agreement on the terms of payment and the conditions under which producers could change merchants and merchants could canvass one against the other, coupled with the necessity of signing the form of agreement on or before the 1st May, combined to oblige members of the Federation when signing the form of contract to do so under protest and on the understanding that the terms of the contract would be reopened and be subject to negotiation between the Federation and the Board.

[11.] A commercial agreement would, of course, be nullified if one of the contracting parties signed under protest; indeed it is scarcely conceivable that such an occasion would arise. The Federation is quite unable to appreciate why its members in their contractual relations with the Board should be deprived of the ordinary rights and freedom of action accorded by law and practice to a contracting party. The Federation considers that the situation created by the Board is not merely contrary to the public interest but wholly repugnant to it.

[12.] Since the form of agreement was signed in the circumstances described, attempts to amend the form of agreement in terms acceptable to the merchants have proved substantially abortive. The consequence is that the merchants have been operating and continue to operate under sanctions imposed by the Board which they do not accept and to which they do not subscribe.

[13.] Accordingly the Federation asks that a Committee of Investigation be directed to investigate the position with the following terms of reference:

(a) To review the relations between the Board and the authorised merchants for the purpose of defining:

- (i) The services to be rendered by the authorised merchants, and the allowances to be made to them.
- (ii) The services to be rendered by merchants who are not authorised; and the allowances to be made to them.
- (iii) The length of tenure to be given to authorised merchants in their employment by the Board.
- (iv) The scope of the services to be rendered by the Board in the collection, packing and grading of wool.
- (v) The conditions upon which merchants may canvass and producers can change from merchant to merchant.

(b) To consider the desirability of defining a formula upon which the rate of remuneration payable by the Board to the authorised merchant shall be based and to make all necessary recommendations.

(c) To consider the desirability of making an amendment in the Scheme to provide for the reference to a single arbiter for final determination of all disputes between the Board and the authorised merchants and to make all necessary recommendations.

[14.] I am directed to add that the Federation in requesting an investigation is acting in full co-operation with the Country Wool Merchants Association, which is addressing a similar application to the Minister of Agriculture.

I am, Sir,

Your obedient servant,

(Sgd.) JOHN K. TEMPLETON,
Secretary.

*Written Representations made to the Committee on behalf of
the British Wool Marketing Board on the Complaints*

(received under cover of letter dated 17th April, 1957)

IN THE MATTER OF THE AGRICULTURAL MARKETING ACTS, 1931-1949, AND THE AGRICULTURAL MARKETING (COMMITTEE OF INVESTIGATION) REGULATIONS, 1949, AND THE BRITISH WOOL MARKETING SCHEME (APPROVAL) ORDER, 1950
and

IN THE MATTER OF COMPLAINTS made on behalf of the Wool Federation of Scotland to the Secretary of State for Scotland and on behalf of the Country Wool Merchants Association to the Minister of Agriculture.

*Representations of the British Wool Marketing Board to the Committee of
Investigation of the above complaints*

1. The Board administers the Wool Marketing Scheme in accordance with the provisions of the British Wool Marketing Scheme (Approval) Order, 1950. The said Wool Federation of Scotland and the said Country Wool Merchants Association are two out of five Associations in England, Scotland and Wales representing agents employed by the Board for the collection and handling of wool purchased by the Board under the said Scheme. These agents are referred to in the said complaints as "authorised merchants". The Board admits that the Wool Federation of Scotland represents a majority of the said agents in Scotland but does not admit that the Country Wool Merchants Association represents 80 per cent. of the said agents in England.

2. The documents containing the complaints of the two Associations are both dated the 11th day of January, 1957, and are in substantially identical terms. The complaints appear to relate to the following matters:—

- (a) The alleged multiplication during the last two years of disputes and differences between the Board and its agents. (Paragraph 2 of the said documents.)
- (b) The absence in the scheme of a provision that any agent who is aggrieved by any act or omission of the Board can refer the matter to a single arbitrator. (Paragraphs 3 and 13 (c).)
- (c) The alleged disregard by the Board on numerous occasions of the recommendations of the Joint Committee (Paragraph 5).
- (d) The failure despite numerous attempts to produce an agreed formula for the basis upon which proper allowance and a fair rate of payment for services rendered by the agents shall be calculated, (Paragraph 6 and 13 (b)).
- (e) The Board's action in offering the agents two alternative forms of contract in February, 1955 (Paragraphs 8 to 10).

3. It appears to the Board that the other matters contained in the said documents are not matters about which any complaint is made. The Board will not therefore deal with them in these representations. It should not, however, be assumed that in so far as the remainder of the document contains statements of fact that the Board concedes that the facts stated are correct or in so far as it contains expressions of opinion that the Board agrees with the opinion expressed. The complaints set out above are dealt with in the following paragraphs.

4. As to (a) above, no details are given of disputes or differences which are alleged to have multiplied during the two years prior to January, 1957, nor is

there any complaint of the Board's conduct prior to or in the course of the alleged disputes or differences (save for the specific matters set out in the remainder of the complaints which are dealt with below). The Board denies that in fact there have been during the two years prior to the complaints any multiplication of such disputes or differences either in number or complexity, or that the Board has in any way acted unreasonably.

5. As to (b) above, the Board denies that it is either desirable or necessary to provide for an arbitrator as suggested by the complainants or that the absence of such an arbitrator has contributed to the alleged accumulation of disputes and differences or to the alleged deterioration in the relations between the Board and its agents. The Board denies that there has been in fact such an accumulation or deterioration. Further the Board submits that the insertion of such a clause in the Scheme would not be within the provisions of the Agricultural Marketing Acts. In fact there is, as appears from paragraph 12 below, an arbitration clause covering certain disputes in an agreement between the Board and the five Federations representing its agents.

6. As to (c) above, the Complainants have not specified the occasions when the Board disregarded the recommendations of the Joint Committee. If, as the Board assumes, this complaint is intended to relate to occasions when the Board has not acted in accordance with the recommendations of the trade members of the Joint Committee, the Board will submit that such occasions have not been numerous and not in the circumstances unreasonable in number, that on all such occasions the Board has had due regard to such recommendations, and that in deciding after due consideration not to comply with the said recommendations the Board was acting reasonably and performing its proper functions under the Scheme.

7. As to (d) above, this complaint is very vague. If it be contended that the Board had a duty under the Scheme to produce such a formula, and had all the material from which such a formula could be produced, and that such a formula so produced by the Board would be in the public interest and in the interest of all persons affected by the Scheme, the Board will deny all these matters. If on the other hand the Complainants allege that they produced such a formula and that it was manifestly correct and in the interests of the public and all persons affected by the Scheme, and that the Board wrongfully failed to accept the said formula, the Board will deny all these matters. The Board submits that the formula proposed is quite unnecessary and undesirable.

8. As to (e) above, the complaint relates to actions of the Board in February and March, 1955, that is, nearly two years before these complaints were made. During these two years the agents represented by the Complainants have had the benefit of the contracts signed by them and of amendments to those contracts made by the Board at the request of (inter alios) the Complainants and of the adjustment of price agreed by the Board under the contracts and the amendments. The Board submits that under these circumstances this complaint should either be rejected out of hand by the Committee or at least approached with reserve.

9. Briefly the history of the events leading up to and subsequent to the actions complained of is as follows:—

Between October, 1954, and February, 1955, the Board and the representatives of the agents had been endeavouring without success to reach agreement on the terms of the contracts between the Board and the agents for the period starting on the 1st May, 1955, and proposals by the Board to issue contracts containing alternative terms were discussed with the Associations prior to February, 1955. There was general agreement that a long term contract was desirable both in the interests of the Board and the agents. The disagreement mainly concerned the rate of remuneration for the agents' services. The agents' representatives asked for a considerable increase over the last season's rate of remuneration. The Board's view was that the earlier remuneration had been too high and that there should be a

reduction in the future rate of remuneration. There was also a difference of opinion between the Board and the agents' representatives on the interpretation, and the proper use to be made, of the figures disclosed in the Inquiry into Costs. Broadly the Board's view was that the costs disclosed should not be used as the sole factor in estimating the future remuneration. The Inquiry was at that time coming to an end and the figures disclosed in the samples of about 50 agents' costs showed a wide variation of costs and profits and great difficulty was being experienced in agreeing on the correct apportionment of the agents' costs where the agents carried on another business in addition to the agency for the Board.

10. In February, 1955, the Board decided to offer the agents two contracts, one a five year contract at a rate of remuneration 10 per cent. less than the rate for the previous year, and the second a one year contract at the previous year's rate. The longer term contract contained a provision for an annual review of the agents' costs and an adjustment in the rate of remuneration if an alteration of costs exceeding 2½ per cent. was disclosed in the review. The reduction of 10 per cent. was not an arbitrary figure disregarding the increase in the costs during the previous year. It was a figure which the Board considered to be fair in all the circumstances including the increase in costs. This figure was in fact accepted as reasonable by one of the Associations representing the agents, namely, the United Kingdom Co-operative Wool Federation. Details of the Board's offer were made known to the Associations by letter dated the 25th February, 1955, and the substance of it had been previously discussed with the Associations. The Board admits that it expressed its intention to relax to some extent its practice of restricting the producers from changing from one agent to another and to remove the restriction against agents canvassing producers. If this is a matter of complaint, of which the Board is uncertain, the Board submit that the action was reasonable.

11. On about the 2nd March, 1955, the Secretary of the Wool Federation of Scotland asked for a copy of the draft contracts. At that time the contracts had not been duplicated and there were only two copies, one of which was on the 3rd March, 1955, sent to the Secretary. The remainder of the Associations were sent copies of the contract on the 8th March, 1955. The drafting of the contracts was considered by the Board with representatives of the agents' Associations and the drafting points raised by the Associations were accepted by the Board on or about the 14th March. On the 16th March the contracts were sent out to the agents. All the agents signed the five year contracts before the 1st May, 1955 with one exception, who signed later. All the members of the Wool Federation of Scotland enclosed a form of protest in identical terms. Further, some of the members of the Country Wool Merchants Association enclosed a similar letter of protest. The Board will, with the leave of the Committee, refer to the contents of these forms of protest at the hearing. The Board denies that there was any understanding of the type set out at the end of paragraph 10 of the complaints.

12. In fact as a result of the negotiations between the Board and the Associations representing the agents an agreement in writing was made between the Board and the said Associations dated the 31st May, 1956, providing that the term in the five year contract providing for an annual review of costs should be amended. The effect of the amendment was that if on the review it was found that there had been an alteration in costs exceeding 2½ per cent. during the current year not only was the remuneration for the next year to be adjusted but also the remuneration for the current year. Also the average cost of the agents' services per pound of wool at the 1st May, 1955, and also the considerations to be applied in determining whether any change in costs has taken place were agreed for purposes of that agreement. Further there was in that agreement an arbitration clause which would be invoked by the Board or the Associations in the case of a dispute. Subsequent to that agreement all the five year contracts were amended. As a result of that agreement an alteration in cost was found to exist during the year 1955-56 and the remuneration for that year was increased by 7 per cent. with the result that the decrease in remuneration for that year compared with the previous year was only 3½ per cent.

13. Turning to the proposed terms of reference of the Committee set out at the end of the complaints, the Board submits that the documents disclose no complaint as to the services to be rendered by the agents referred to in (a) (i) or as to any of the matters referred to in (a) (ii), (iii), (iv) and (v).

14. The Board submits that the documents containing the complaints do not establish that any provision of the Scheme or any act or omission of the Board is contrary to the interests of any persons affected by the Scheme or not in the public interest.

Doc. 4.

*Written Representations made to the Committee on behalf of
the Country Wool Merchants Association and the Wool
Federation of Scotland in the Complaints*

Cereal House,
Mark Lane,
London, E.C.3.
17th April, 1957.

The Secretary,
Committee of Investigation for Great Britain,
Whitehall Place,
London, S.W.1.

DEAR SIR,

Re: Wool Marketing Board Committee of Investigation

Further to your letters of the 20th March addressed in identical terms to the Country Wool Merchants Association and the Wool Federation of Scotland announcing the reference to the Committee of Investigation of the complaints made by the Association and the Federation relating to the operation of the British Wool Marketing Scheme, we have to inform you that we have received instructions to act on behalf of the Association and as London Agents for Messrs. McGrigor, Donald & Co., the Solicitors for the Federation.

It occurs to us that as the substance of the complaints on behalf of both organisations is broadly the same it would be more convenient for their case to be presented jointly. Unless therefore the Chairman of the Committee gives directions to the contrary, we shall proceed on the basis that representations, evidence, documents and submissions will be tendered jointly.

The following representations are made on behalf of our clients on the matters identified in the terms of reference suggested in the complaints:

(a) (i) That the services to be rendered by an "A" Merchant shall be as follows:

(1) Not knowingly to buy or handle on his own behalf any wool produced in the United Kingdom except

- (a) wool produced by a producer who is exempt from registration,
- (b) wool which has been owned and sold by the Board, and
- (c) skin wool.

(2) To collect as the Board's Agent such producers' wool as the Board shall from time to time instruct or authorise him to collect and to acknowledge immediately to each producer the receipt of his wool, stating the number of containers received and not to collect or accept any other producers' wool.

(3) To provide suitable and adequate warehouse premises and accommodation and all necessary labour and appliances, including accurate scales, for the running of a warehouse and for valuing, grading, packing, inspecting, sampling, storing and forwarding the producers' wool.

(4) To keep proper books and to make accurate returns to the Board and to comply with all reasonable instructions of the Board relating to the keeping of books and the making of returns.

(5) To allow officials appointed by the Board at any time to inspect his premises, stocks, books, invoice files and other documents all of which foregoing relate to producers' wool.

(6) To supply to the producers at their farms or nearest station or pier, sheets, bags, or bales, strings and advice of despatch forms for the proper packing and despatching of the producers' wool from the farms.

(7) To pay and bear inwards carriage (if any) on producers' wool delivered in accordance with instructions issued by the Board to producers.

(8) To value (or in Scotland to permit the valuation of) all producers' wool as soon as practicable after it is received, in accordance with the Maximum Price Schedule published by the Board for the current season, and forthwith to notify the producer concerned of the result of such valuation.

(9) To pay direct to producers (or as they shall direct) on behalf of the Board a sum in accordance with the valuation of their wool or, if notice of appeal against such valuation shall be given, then in accordance with the decision of the Valuation Appeal Tribunal.

(10) To make the payments aforesaid promptly.

(11) To store the producers' wool if, so required until the 30th April following the date of delivery.

(12) To take every reasonable precaution to protect the producers' wool against loss, damage or deterioration.

(13) To keep all producers' wool separate and apart from any other wool in such a way as to avoid any possibility of (a) the mingling of producers' wool with any wool belonging to the Agent or others or (b) any mistake in the identity of the separate wools.

(14) To grade properly to the standards required by the Board all wool which the Board require to be graded.

(15) To despatch sample bales as instructed by the Board and to accept full responsibility for all sample bales of graded wool correctly representing the bulk.

(16) To give delivery to purchasers in accordance with delivery orders issued to him by the Board or by the Board's appointed selling agents.

(17) To accept responsibility for all short weights and errors appearing in his accounts as an Agent of the Board in respect of which he is unable to give an explanation satisfactory to the Board.

Further that, in computing the rates of remuneration payable to authorised merchants, allowance should be made, not only for the following items, which have been agreed by the Board namely:—

(A) Warehouse wages and bonuses.

(B) Graders wages and bonuses.

(C) Skewers and Twine.

(D) Warehouse expenses, including Rent, Rates and N.A.V. and building repairs.

- (E) Plant.
- (F) Outside storage.
- (G) Office expenses.
- (H) Carriage—public.
- (I) Carriage—own transport.
- (J) Travelling—public.
- (K) Travelling—own transport
- (L) Clerical salaries and bonuses
- (M) Administration and Managerial salaries and bonuses
- (N) Audit, Insurance and other expenses
- (O) Interest on finance
- (P) Cost of sheets, bales, bags, etc.,

but also the following items :

- (Q) Full payment of all commissions properly paid to sub agents employed by "A" merchants
 - (R) Work personally undertaken by Proprietors and Directors in connection with administration, handling and grading, and
 - (S) A fair and reasonable profit
- (ii) That the services to be rendered by merchants or agents who are not authorised merchants shall be such services as the authorised merchant reasonably requires to be performed and that payment for such services at customary rates by the authorised merchant shall be included in calculating the rate of remuneration payable to the authorised merchant by the Board, provided that the authorised merchant in employing merchants or agents not authorised shall not do so without first obtaining the undertaking of such merchant or agent not knowingly to buy or handle either on his own account or on behalf of any authorised agent any wool he is not permitted to buy or handle and to observe such of the obligations as may contractually be owed by the authorised merchant to the Board in relation to the particular service to be rendered.
- (iii) That reasonable security of tenure be granted to authorised merchants by securing so far as may be practicable that the duration of contracts between such merchants and the Board shall coincide with the statutory life of the Board subject to due performance of the contract of employment and to provision for the sooner determination of such contract by or on behalf of either party thereto upon due notice.
- (iv) That the scope of services to be rendered by the Board in the collection packing and grading of wool should be confined to an experimental unit constituted or maintained solely for non-commercial purposes.
- (v) That there should be no canvassing which is regarded as wholly incompatible with an efficient relationship between producer and merchant, and merchant and the Board, and further that a change of merchant should only be made upon written application by a producer setting out the reasons for desiring to change, a copy of such application to be communicated to both merchants concerned. In cases of dispute either the producer or the merchants should have power to refer the application to an independent tribunal similar in character to the tribunal operating during war time control.
- (b) That a formula shall be defined upon which the rate of remuneration payable by the Board to the authorised merchant shall be based. It is envisaged that such a formula would limit negotiations between the Board and the representatives of the merchants to the calculation of figures and limit if

not exclude disputes or differences arising concerning the basis upon which the remuneration is to be calculated. Accountants acting on behalf of the Association and the Federation are engaged in drafting a formula for consideration by the Committee.

- (c) That an amendment should be made to the scheme to provide for the reference to a single arbitrator of all disputes between the authorised merchants and the Board. The need for such an amendment is regarded as overwhelmingly self evident.

Our clients have sought our advice on the steps to be taken to present the evidence and contentions in support of the representations they now make. It is, we think, clear that the matters in issue cannot be dealt with effectively in written submissions. Moreover, it will surely be the wish of the Board that testimony on behalf of the Complainants should be questioned and investigated. In the circumstances it is assumed that the Chairman of the Committee will direct that oral evidence shall be given.

We intend to brief Counsel to conduct the matter on behalf of our clients and, subject to any directions given by the Chairman, propose to ask Counsel in due course to advise on the documents to be used. In order that all relevant documents shall be included and that bundles shall, for everyone's convenience, be paged and agreed, we suggest that we should approach the Board (or its advisers) for its co-operation.

A copy of this letter is being sent to the Board and we assume that we shall later receive a copy of any reply made by the Board.

Yours faithfully,

C. G. METSON & CO.

Doc. 5.

Further Particulars of the complaints dated 11th January, 1957, which were requested of the complainants on behalf of the British Wool Marketing Board on 24th May, 1957.

Under Paragraph 2

Particulars of "the disputes and differences" referred to, stating the date when each said dispute or difference arose and its nature, and further stating which of the said disputes or differences remained a matter of contention and which were subject to unilateral action by the Board, giving the date of the Board's action or actions, and specifying the said action or actions, and stating whether complaint is made about the said action or actions and if so, specifying the nature of the said complaint.

Under Paragraph 5

Particulars of the occasions when it is alleged that the Board has disregarded the recommendations of the Joint Committee and acted to a contrary intent, identifying both the said recommendation and the action or actions of the Board referred to and stating whether the said actions are matters about which complaints are made, and, if so, specifying the nature of the complaints.

Under Paragraph 6

Particulars of the said attempts to produce an agreed formula and the said negotiations involved, identifying both the said attempts and the said negotiations and stating whether complaint is made of any act or omission of the Board during the said attempts and/or negotiations and, if so, specifying the said acts or omissions and the nature of the said complaint.

Under Paragraph 9

Particulars of the said increase in costs relied on, stating the period during which the said increase took place and the amount of the said increase.

Under Paragraph 10

(a) Particulars of—

- (1) The circumstances in which it is alleged that the alternative form of contracts were offered.
- (2) The alleged attitude of the Board stating what acts or omissions (if any) of the Board are relied on, and specifying the said acts or omissions and stating the nature of the complaint (if any).

(b) Particulars of the alleged understanding on which the members signed, stating any matter on which it is relied in support of the allegation that the said members signed on the said understanding and whether it is alleged that the said members communicated the alleged understanding to the Board and, if so, whether the communication was oral or in writing, if oral, identifying the occasion or occasions and if in writing identifying the document or documents.

Under Paragraph 12

Particulars of the attempts to amend the agreement which have proved substantially abortive stating when the said attempts were made and whether complaints are made about any act or omission of the Board in relation to the said attempts and, if so, giving particulars of the said acts or omissions and specifying the nature of the said complaints.

Under Paragraph 13 (c)

Particulars of the amendment required by the complainants, setting out the terms thereof.

Doc. 6.

*Letter on behalf of the complainants enclosing Proposed
Formula on which to base Merchants' Remuneration*

Cereal House,
Mark Lane,
London, E.C.3.
3rd July, 1957.

The Secretary,
Committee of Investigation for Great Britain,
Whitehall Place,
London, S.W.1.

DEAR MADAM,

We have to acknowledge your letter of 19th June.

With regard to the second paragraph, we hope shortly to supply to the British Wool Marketing Board further and better particulars of the disputes and differences referred to in our original letter of complaint together with fuller particulars of the other allegations made. When we do so, we shall supply you with a copy which we hope will be sufficient to clarify the matters in issue.

The draft formula which has been prepared by accountants acting on behalf of the Association and Federation is now available and a copy is enclosed for the consideration of the Committee.

In due course the documents to be used by our clients and the Board will be agreed as between ourselves and the Board's solicitors and copies will be forwarded to the Committee.

It is noted that the Committee will sit to hear oral evidence on the 19th and 20th September next.

Yours faithfully,
(Sgd.) C. G. METSON & Co.

Enclosure to Document 6

PROPOSED FORMULA UPON WHICH REMUNERATION PAYABLE BY THE BRITISH WOOL MARKETING BOARD TO THE AUTHORISED MERCHANTS SHALL BE BASED AS SUBMITTED BY THE COUNTRY WOOL MERCHANTS ASSOCIATION AND THE WOOL FEDERATION OF SCOTLAND

(a) In computing the rates of remuneration payable to Authorised Merchants, their costs of operation and other due allowances, as specified below, shall be taken into account in accordance with the bases below set forth. The amount to be brought into account shall be in respect of each item the whole amount in connection with work performed on behalf of the Board; that is to say, in the case of Merchants working solely for the Board, the whole amount for each item, and in the case of Merchants engaged in other activities besides work performed for the Board, the whole amount for each item subject to reduction by an appropriate proportion in respect of such other activities.

(b) The computation of each item shall be in accordance with the following bases:—

<i>Item</i>	<i>Basis</i>
(A) Warehouse Wages and Bonuses ...	In accordance with the basis used in the 1954-5 Cost Survey which resulted in agreement of Items 1, 2 and 4-19 inclusive in the 1st Schedule of the Cost Changes Agreement.
(B) Graders Wages and Bonuses ...	
(C) Skewers and Twine ...	
(D) Warehouse Expenses including Rent, Rates and N.A.V. and Building Repairs ...	
(E) Plant ...	
(F) Outside Storage ...	
(G) Office Expenses ...	
(H) Carriage—public ...	
(I) " —own transport ...	
(J) Travelling—public ...	
(K) " —own transport ...	
(L) Clerical Salaries and Bonuses ...	
(M) Administration and Managerial Salaries and Bonuses ...	
(N) Audit, Insurance and other expenses ...	
(O) Interest on finance ...	
(P) Cost of Sheets, Bales, Bags, etc. ...	
(Q) Agents' Commission ...	Two-thirds of the Commission revealed by the Costing Investigation and paid to "B" and "C" Merchants employed by the Authorised Merchants.
(R) Proprietors' Remuneration ...	Remuneration to be allowed for work personally undertaken by proprietors and directors in connection with management, administration, handling and grading of three-eighths of one penny per lb.
(S) Profit Allowance ...	Six-tenths of one penny per lb. to cover in particular:— (i) Merchants appraisalment risk. (ii) Interest on Capital employed, other than financing the purchase of Wool on behalf of the Board and use of owned property. (iii) Profit on grading. (iv) Profit on hire of sheets and storage. (v) Reward for specialised knowledge acquired by Merchants over a long number of years prior to the inception of the Marketing Board.

(c) Items (A) to (R) shall be assessed annually in respect of changes in their levels in accordance with the provisions of the Contract governing changes of costs as executed in May, 1956, and Item (S) in accordance with the movement of the Index of Retail Prices.

(d) The total of (b) as adjusted under (c) shall represent the average global fee payable by the Board to Merchants.

(e) The charges for supplementary services rendered by Merchants (e.g. Storage, etc.) as agreed from time to time shall continue to be in addition to the general fees payable under (d).

(f) This formula shall apply during the term of the five-year contracts executed in 1955, and thereafter as long as circumstances demand no change in the bases of computation. Should, however, a further cost survey in the future be carried out, the bases to be used for ascertainment of items covered by that survey shall be as above, or if so agreed between the Board, and the Federation, shall be revised, subject to the proviso that should dispute arise over the definition or interpretation of any basis, such dispute shall be referred to an independent arbiter.

Doc. 7.

*Reply on behalf of the complainants to the further particulars
requested on 24th May, 1957, on behalf of the
British Wool Marketing Board.*

Messrs. Ellis & Fairbairn,
Giggs Hill Green,
Thames Ditton,
Surrey.

25th July, 1957.

DEAR SIRs,

**Committee of Investigation. Country Wool Merchants Association and the
Wool Federation of Scotland v. British Wool Marketing Board**

Further to your letter of the 24th May, the following further particulars of the complaints are given.

Under paragraph 2. The following disputes and differences are referred to:

(a) Two tier contract. The first definite statement that a two tier contract was contemplated by the Board was made on the 16th February, 1955, at a meeting between the Board and representatives of all Merchants Federations. At the request of the Board, the Federations considered such proposals, and objections were raised by the Co-ordinating Secretary of the Federations on the 24th February, 1955, by letter and telephone. Notwithstanding this, the Board by letter dated 25th February, 1955, addressed to the Secretaries of all Federations offered:

- (i) A one year contract at the rate previously paid to the Complainants.
- (ii) A five year contract at the above rate less 10 per cent.

In addition the Board then announced that producers would be free to choose the merchant whom they wish to handle their clip, subject (inter alia) to the following condition:

"No producer may change to a merchant receiving a higher remuneration rate unless under exceptional circumstances."

Such condition was not included in the proposals made by the Chairman of the Board on the 16th February, 1955. Further, in March, 1955, when forms of contract were issued to merchants, there was also issued a memorandum "Explanation of alternative forms of contract". The memorandum indicated that the Board wished to develop their future system on merchants who took up a five year contract. The Board's action in dispatching their said letter of the 25th February, 1955, before the objections and observations of the Merchants Federations had been considered, was unilateral, and the introduction in the one year contract of the condition in regard to the change of a producer to a merchant receiving the higher remuneration rate was likewise unilateral.

(b) Change of merchant. Such dispute arose on the 22nd September, 1954, after the issue of "Proposals for remuneration of merchants" issued by the Board on that date, to Merchants Federations which included the following statement: "In the light of the current trend of less control over the individual, the Board would in any case need to consider giving producers more freedom in their choice of merchants. The Costs Survey Committee have also considered the desirability of using a greater degree of freedom of choice to assist the Board in channelling wool more economically. A greater degree of freedom of choice is in these proposals to provide the stimulus which will activate competition between merchants." Similarly in "Proposals for remuneration of merchants (2)" issued by the Board on the 6th December, 1954, it was stated:—

"(5) A producer should be free to choose

(i) A merchant in the same category as his present one.

(ii) A merchant in a higher category.

Unless under exceptional circumstances, no producer could change to a merchant in a lower category

(6) producers would be able to obtain the names of those merchants to whom they would be free to change."

The merchants' representatives objected to the proposal contained in the "Proposals for Remuneration of Merchants" issued on the 22nd September, 1954, at a meeting between representatives of Merchants Federations and the Board held on the 12th October, 1954, and again at a similar meeting on the 16th February, 1955. The decision of the Board in regard to change of merchant became subject to unilateral action by the Board on the 25th February, 1955, when in their said letters addressed to the secretaries of all Merchants Federations, the Board confirmed that wool producers would be free to choose the merchant whom they wished to handle their clips, subject to certain limitations.

Furthermore the Board, in its "Explanation of alternative forms of contract" sent to all merchants in March, 1955, stated that the Board had decided that producers should be free to change their merchant as from 1956, again subject to certain limitations.

(c) Canvassing. Such dispute arose on the 22nd September, 1954, when the said "Proposals for remuneration of merchants" were issued by the Board to all Merchants Federations, in which it was stated that another major change which would be involved would be freedom of merchants to canvass. The merchants' representatives objected to these proposals on the 12th October, 1954, at a meeting between the Board and the said merchants' representatives. On the 6th December, 1954, the Board issued the said "Proposals for Remuneration of Merchants (2)" in which was included the statement "Restrictions on canvassing would have to be exercised." On the 16th February, 1955, the merchants' representatives again repeated their objection to the original proposal to permit canvassing. The proposal became subject to the unilateral action of the Board when their said letters of the 25th February, 1955, were written to the Secretaries of the Merchants Federations in which the Board stated that although the Board would wish the canvassing activities of merchants to be restricted to some extent, it had

been decided that no practicable measures could be taken and that merchants should therefore be free to canvass producers clips.

Furthermore in the said "Explanation of alternative forms of contract" issued to merchants in March, 1955, the Board stated that canvassing of producers clips was to be allowed as from the 1st May, 1955.

(d) Handling by the Board. On the 23rd February, 1955, the Board's representative announced to the Joint Committee that the Board proposed to take over a merchant's business at Oak Mills as an experimental handling unit.

The trade representatives on the said Joint Committee were unanimously opposed to the suggested taking over of the unit at Oak Mills, and the Chairman promised to endeavour to report such views to the Board. The Secretary of the Wool Federation of Scotland wrote on the 10th March, 1955, objecting to this proposal on behalf of his Federation and correspondence ensued. Despite such objections and after the date of such correspondence, the Board took over the unit at Oak Mills, and has since run the same.

(e) Costing. The Board by letters dated 25th April, 1953, addressed to all Merchants Federations, referred to a meeting which had taken place between Merchants Federations and the Board on the 22nd April, 1953, in the following terms: "All Merchants Federations agreed that a Cost Investigation was necessary in order to establish a fair rate for the job." Before the said cost survey was completed the Board issued the said "Proposals for Remuneration of Merchants" dated the 22nd September, 1956 [1954], and in such proposals stated that the cost material could not form an exclusive basis for fixing merchants remuneration.

On the 2nd December, 1954, the Board wrote to the secretaries of all Merchants Federations defining its aims and objects in the cost survey and stated that when the average cost figure had been calculated in accordance with the steps set out in their said letter, negotiations to fix an average remuneration rate might commence. "This would take the form of mutual assessment of the various items which would be included in the margin above average cost". On the 6th December, 1954, in the said document "Proposals for Remuneration of Merchants (2)" issued by the Board to Merchants Federations, the Board stated that the cost survey results should be used as a base for the negotiation of an average remuneration rate.

The Chairman of the Board, in his opening remarks at a meeting with representatives of Federations on the 19th January, 1955, stated that it was necessary to form a composite picture of the cost survey results from which the Board might determine its policy. First the Board must decide whether it was reasonable to base future remuneration on the average cost as returned, plus an element of profit. The Cost Survey Committee in the light of these circumstances had concluded that:

- (a) Under the present system of remuneration there was inadequate incentive to economical handling.
- (b) The present rates of remuneration condoned the payment of unnecessary costs.
- (c) The Survey figures illustrated that the present system was unduly costly and that adjustments were necessary.

Such a statement was unilateral in that the Chairman stated that the Cost Survey Committee had reached certain conclusions, although the representatives of the Federations had had no discussions on such conclusions with the Cost Survey Committee of the Board or the Board's own representatives.

The Chairman of the Board further stated at the said meeting on the 19th January, 1955, that the Board had therefore prepared and approved the modified system of remuneration (already circulated) which it was felt would provide a positive incentive to efficiency. It was not however until the 11th February, 1955, that the Board issued to the accountants to the Complainants, a qualified result of the cost survey. At the meeting on the 16th February, 1955, between the Board and representatives of the Merchants

Federations, the Chairman of the Board reported at some length on the Board's assessment of the Costs and Profits margins. The representatives of the Merchants Federations strongly objected to the said assessments as the purpose of the said meeting was to agree costs and to settle outstanding differences and further to agree upon the profit margin, from which an average global fee could be agreed. No opportunity was however given for such agreement, the Chairman merely presented the figures in his introductory notes and such figures were immediately disputed by the Federations' representatives. The result of the meeting was that the Board ignored the results of the Cost Survey and presented their unilateral decision as to remuneration as set out in their letter of the 25th February, 1955, addressed to the secretaries of all Merchants Federations. The only items still in dispute arising out of the Cost Survey so far as the Complainants are concerned are:

- (i) An allowance for work personally done by Directors and Proprietors in connection with management, administration, handling and grading of wool.
- (ii) An allowance for work done by agents.
- (iii) Profit margins.

Under paragraph 5. The Board has disregarded the recommendations of the Joint Committee on the following occasions and complaint is made of the said action of the Board in so disregarding the recommendations.

(a) At a meeting held on the 27th October, 1954, it was the general consensus of opinion that remuneration proposals should be postponed until after the completion of the Cost Survey. No resolution was passed but notwithstanding the opinion of the Committee, remuneration proposals were put forward before completion of the said cost survey.

(b) At a meeting held on the 23rd February, 1955, the Joint Committee recommended the rejection of the proposal of the Board to set up a handling unit at Oak Mills; notwithstanding such recommendation the Board took over such handling unit.

(c) On the 22nd February, 1956, the Joint Committee passed the following resolution by a majority of 7 votes to 1.

"To recommend the Board to disallow change of Merchant without justifiable reason, and to withdraw their approval of canvassing."

Notwithstanding such resolution the Board has allowed both change of merchant and canvassing of producers clip by merchants.

Under paragraph 6. Attempts to produce a formula for a method of calculating a proper allowance and a fair rate of payment by the Board on the following occasions:—

- (a) At a meeting between the Accountants of the Complainants and other Federations with the representatives of the Board held in Bradford on the 12th November, 1954.
- (b) At a meeting between representatives of Merchants Federations and the Board's Costs Survey Committee on the 19th January, 1955.
- (c) At a meeting between the Board's representatives and Accountants of the Complainants and other Federations on the 31st January, 1955.
- (d) At a meeting between the Board and representatives of Merchants Federations on the 16th February, 1955.

The Accountants at the meeting on the 31st January, 1955, attempted to raise the question of profit margins, but the Board by its representatives declined to discuss profit margins, stating that this question was one for decision between the Board and the Federations. On the 16th February, 1955, the Chairman of the Board in his "Introductory Notes on Remuneration Negotiations" set out the Board's figures prepared to show costs and profits margins, but such figures were then disputed by the Complainants.

The representatives of the Country Wool Merchants Association raised the question of profit margin at their meeting with the Board on the 21st December, 1955, but no progress was made.

Under paragraph 9. The Association will rely on the general rise in the retail price index in the year 1951 to the year 1955. The rise in the index of salaries and wages and general fall in the value of pound sterling.

Under paragraph 10.

(a) 1 & 2. The Complainants repeat the facts set out under the sub-heading "Two tier contract" under paragraph 2 above. In addition, the form of contract referred to in the said letter of the 25th February, 1955, only came into the hands of the Chairman of Country Wool Merchants Association on the 8th March, 1955, thus leaving insufficient time for the consideration of the terms of the contract. In addition the secretary of the Board stated, during a conversation with the Solicitors to the Country Wool Merchants Association on the 11th March, 1955, that the contract would be sent out on the 15th day of March, 1955, and any representations as to the form of contract must be made before then. Consequently a meeting took place between the Solicitors to the Country Wool Merchants Association and the Solicitor to the Board at the latter's private house at which certain modifications not the subject of this complaint were made to the form of contract. The secretary to the Country Wool Merchants Association and the Solicitor to the Country Wool Merchants Association both on the 11th March, 1955, wrote to the Secretary of the Board protesting against the terms of the 5-year contract and the secretary to the Country Wool Merchants Association further asked the Board to receive a deputation thereon.

(b) Certain merchants, members of the Country Wool Merchants Association, enclosed a letter with the contract signed by them giving their reasons for rejecting the one-year contract, but stating that the contract signed by them was signed under protest and that it was their understanding that the Country Wool Merchants Association had written to the Board asking for the re-opening of negotiations. The Complainants will refer to such letters at the hearing before the Committee of Investigation and request the Board to produce such letters as have been received by them.

The Secretary of the Wool Federation of Scotland, on behalf of all its members who signed the Contract of Agency, wrote to the Board on the 26th March, 1955, informing the Board that the contracts had been signed under the strongest possible protest and set out in detail the specific matters of protest.

Under paragraph 12. The Complainants will rely on the particulars given above and also on the results of the meeting between the Country Wool Merchants Association on the 20th July, 1955, at which a memorandum was presented, and to the Board's reply of the 10th August, 1955, and the Country Wool Merchants Association's reply thereto of the 18th October, 1955.

Attempts to amend the agreement were also made by the Wool Federation of Scotland at their meeting with the Board on the 27th July, 1955, at which a memorandum was also presented and the Board replied to such a memorandum on the 18th August, 1955, to which a reply by the Wool Federation of Scotland was made on the 18th October. Further attempts were made at the meeting between the Board and the Country Wool Merchants Association on the 21st December, 1955.

Under paragraph 13 (c). The following amendment is required to the scheme:

"Any merchant who is aggrieved by an act or omission of the Board may refer the matter to the arbitration of a single arbitrator to be agreed upon between the merchant and the Board or in default of agreement to be nominated by the Minister on the application of either party and the arbitrator may make such order in the matter as he thinks just.

The Arbitration Act, 1950, or any statutory amendment thereof shall apply to every arbitration consequent on a reference under this paragraph."

Yours faithfully,

C. G. METSON & Co.

Request on behalf of the complainants for further and better particulars of the representations of the British Wool Marketing Board

IN THE MATTER OF THE AGRICULTURAL MARKETING ACTS, 1931-1949, AND THE AGRICULTURAL MARKETING (COMMITTEE OF INVESTIGATION) REGULATIONS, 1949, AND THE BRITISH WOOL MARKETING SCHEME (APPROVAL) ORDER, 1950,

— and —

IN THE MATTER OF COMPLAINTS made on behalf of the Country Wool Merchants Association to the Minister of Agriculture and on behalf of the Wool Federation of Scotland to the Secretary of State for Scotland.

REQUEST ON BEHALF OF THE ASSOCIATION AND FEDERATION FOR
FURTHER AND BETTER PARTICULARS OF THE REPRESENTATIONS OF THE
BRITISH WOOL MARKETING BOARD

Under Paragraph 5

Of the allegation that there is an arbitration clause covering certain disputes in an agreement between the Board and the five Federations representing its agents specifying precisely what agreement was made between the Board and what five Federations identifying its full terms and all material documents.

Under Paragraph 6

Of the allegation that if as the Board assumes the complaint is intended to relate to occasions when the Board has not acted in accordance with the recommendations of the trade members of the Joint Committee such occasions have not been numerous and not in the circumstances unreasonable specifying precisely:

- (a) The occasions when the Board has not acted in accordance with the recommendations of the trade members of the Joint Committee.
- (b) Whether any distinction is drawn between recommendations by the Joint Committee, and by some and if so which of its members.
- (c) The facts and circumstances relied upon to show that the Board was acting reasonably in not complying with such recommendations.

Under Paragraph 8

Of the allegation that the Complainants had the benefit of the contracts signed by them and of amendments to those contracts made by the Board at the request of (inter alios) the Complainants specifying precisely:

- (a) What is intended to be conveyed by the words "the Complainants have had the benefit of the contracts signed by them".
- (b) What amendments are referred to.
- (c) What is meant by the words "amendments made by the Board at the request of (inter alios) the Complainants" particularising what other parties requested amendments to the contracts to which the Complainants were parties.

Under Paragraph 9

(i) Of the allegation that the proposals by the Board to issue contracts contained alternative terms were discussed with the Associations prior to February, 1955, specifying precisely when and with whom such discussions took place and identifying all material documents.

(ii) Of the allegation that there was general agreement that a long term contract was desirable both in the interests of the Board and the agents specifying precisely:

(a) What is meant by the phrase "general agreement".

(b) When was such agreement made and by whom on behalf of the Complainants.

(iii) Of the allegation that the Board's view was that the costs disclosed should not be used as the sole factor in estimating the future remuneration specifying precisely what other factor or factors should be used in estimating the future remuneration.

Under Paragraph 11

(i) Of the allegation that the drafting of the contracts was considered by the Board with representatives of the agents' Associations and the drafting points raised by the Associations were accepted by the Board on or about the 14th March, 1955, specifying precisely:

(a) What drafting points were raised.

(b) When and by whom on behalf of the Complainants were such drafting points raised identifying all material documents.

(c) Whether the drafting points were accepted by the Board on or about the 14th March orally or in writing, if in writing identifying the documents: if orally, to whom communicated on behalf of the Complainants.

(ii) Of the allegation that some of the members of the Country Wool Merchants Association enclosed a letter of protest identifying all such letters of protest and furnishing copies thereof.

DELIVERED this 25th day of July, 1957, by
C. G. Meison & Co., Solicitors for the
Country Wool Merchants Association and the
Wool Federation of Scotland.

Doc. 9.

Reply on behalf of the British Wool Marketing Board to the complainants' request of 25th July, 1957 (document 8)

IN THE MATTER OF THE AGRICULTURAL MARKETING ACTS, 1931-1949, AND THE AGRICULTURAL MARKETING (COMMITTEE OF INVESTIGATION) REGULATIONS, 1949, AND THE BRITISH WOOL MARKETING SCHEME (APPROVAL) ORDER, 1950

— AND —

IN THE MATTER OF COMPLAINTS made on behalf of the Country Wool Merchants Association to the Minister of Agriculture and on behalf of the Wool Federation of Scotland to the Secretary of State for Scotland.

FURTHER PARTICULARS OF THE BOARD'S REPRESENTATIONS DELIVERED PURSUANT TO THE REQUEST DATED THE 25TH DAY OF JULY, 1957.

Under Paragraph 5

An arbitration clause is contained in clause 8 of an agreement in writing dated the 31st day of May, 1956, and made between (1) The British Wool Marketing Board and (2) The British Wool Federation, The Wool Federation of Scotland, the Country Wool Merchants Association, The Welsh Country Wool Merchants Association, and the United Kingdom Co-operative Wool Federation.

The above-named Associations are the five Federations referred to in paragraph 5 of the said Representations and are hereinafter referred to as "The five Federations".

Under Paragraph 6

(a) The only occasions on which the Board admits that it disregarded the recommendations of Trade Members of the Joint Committee are as follows:—

- (1) The recommendation dated the 23rd February, 1955, referred to in the Complainants Further Particulars dated the 25th July, 1957, under paragraph 5 (b).
- (2) The recommendation referred to under paragraph 5 (c) of the said Further Particulars which recommendation was made on the 23rd May, 1956.

The Board only admits that it disregarded the above recommendation to the extent set out in (c) below.

(b) The Joint Committee set up under paragraph 33 (1) of the Scheme consists of 14 members, 6 of whom are members of the Board and the remainder represent the Wool Trade. When a question is considered by the Joint Committee and a vote is taken on that question, the practice is that the members of the Board on the Joint Committee do not vote, but the Trade members do vote. A resolution passed by a majority vote of the Trade members may be loosely referred to as a resolution of the Joint Committee but in fact it is only a resolution passed by a majority of the Trade members of the Committee.

(c) (1) As to the said recommendation dated the 23rd February, 1955, the Board received notice in or about January, 1955, from one of the Board's agents that he (the agent) wished to discontinue handling some 185,000 lb. of wool which he had previously handled. The Board had space available to handle the said quantity of wool at premises owned by the Board at Oak Mills. The Board wished to handle the said wool to acquire experience and knowledge of the cost of transporting and handling wool, and in spite of the said recommendation the Board has in fact handled the said wool at the said premises and has obtained useful experience and knowledge in so doing. The Board submits that its action was *prima facie* reasonable and was done for a purpose which was consistent with the proper performance of the Board's functions under the Scheme.

(2) As to the said recommendation dated the 23rd May, 1956, the Board admits that it had permitted producers to change their merchants in certain circumstances. If the Board's above action constitutes a disregard of the said resolution the Board submits that *prima facie* it is reasonable that producers should be permitted to change their merchants so long as a change does not interfere with the proper operation of the Scheme, and that liberty to producers to change their merchants in the circumstances referred to above would be likely to benefit the Scheme and/or result in economies in its operation and/or is of benefit to the producers.

The Board's attitude towards canvassing of producers by merchants was set out in the letters of the 25th February, 1955, referred to in the Further Particulars delivered by the Complainants dated the 25th July, 1957, under paragraph 2 (c). The Board does not admit that this constitutes approval by the Board of canvassing or a disregard of the said recommendation.

Under Paragraph 8

(a) The usual meaning.

(b) Amendments contained in a supplementary agreement in writing in common terms signed by the Board and the merchants generally in or about the months of June and July, 1956.

(c) The amendments were made at the request of the five Federations.

Under Paragraph 9

(i) The proposals were discussed at a meeting between representatives of the Board and of the five Federations on the 19th January, 1955. Material documents are the reports of the said meeting and the following documents which were before the second meeting:—"Proposals for remuneration of merchants (2)" and "Statement on costs for meeting with the British Wool Marketing Board, 19th January, 1955".

(ii) (a) General consensus of opinion between the members of the Board and its agents and/or their representatives.

(b) There was no formal agreement.

(iii) Other factors to be considered were; to what extent the costs disclosed were correct especially having regard to the fact that apportionment of costs between the Board's business and other business was necessary in many cases, to what extent the costs disclosed were reasonable or could be reduced, the fact that the costs disclosed varied widely, and the factor of remuneration or profit.

Under Paragraph 11

(i) Copies of the drafts of the contracts were sent to the Wool Federation of Scotland on the 3rd March, 1955, and to all other Federations on the 9th March, 1955.

(a) No drafting points were raised on the one year contract. Two objections only were taken by the complainants to the draft of the five year contract,

(1) to a provision that if the agent terminated his contract by a month's notice he should not within five years again handle wool for the Board either alone or with others, and

(2) that a provision against assignment of the contract without the consent of the Board did not stipulate that the Board should not unreasonably withhold consent.

(b) The said points were raised by the Solicitor to the Country Wool Merchants' Association with the Solicitor to the Board on the 12th March, 1955.

(c) The Board conceded both points subject (on the first point) to enlarging the notice required from an agent to a period of nine months instead of one, and the Solicitor to the said Association was so informed by the Solicitor to the Board on the telephone on the 14th March, 1955, and made no objection to the proposed enlargement.

Mr. Templeton of the Scottish Wool Federation and Mr. Heppenstall, the secretary of the Co-ordinating Committee of Federations were also informed by the Secretary to the Board on the telephone on the same day and expressed their agreement with the contract (except the terms of remuneration) as so altered.

(ii) The Complainants have inspected the said letters.

DELIVERED THIS 20TH DAY OF AUGUST, 1957,
by Ellis & Fairbairn, Solicitors for the
British Wool Marketing Board.

of Giggs Hill Green,
Thames Ditton, Surrey.

Doc. 10.

Final Submissions to the Committee of Investigation Made on 26th November, 1957, on behalf of the complainants

SUBMISSIONS ON BEHALF OF COMPLAINANTS

1. The Complainants ask the Committee to find:—

(a) That the act of the British Wool Marketing Board in requiring members of the complainant organisations immediately prior to the 1st May, 1955, either—

(i) To accept a one year contract with the Board when as the Board well knew by reason of the circumstances in which it was offered that it was commercially unacceptable.

or

- (ii) To accept a five year contract with the Board when as the Board well knew it contained terms relating to remuneration which were never approved or accepted by or on behalf of the members of the complainant organisations

was contrary to the interests of persons affected by the Scheme namely the body of merchants belonging to the complainant organisations.

- (b) That the act of the Board as aforesaid is not in the public interest.
- (c) That the conduct of the British Wool Marketing Board in the respects set out in the letters of complaint to the Minister dated the 11th January, 1957 and particularised in the letter dated the 25th July, 1957 addressed by the solicitors for the Complainants to the solicitors for the Board was contrary to the interest of persons affected by the Scheme, namely, the body of merchants belonging to the Complainant organisations and that such conduct, constituting acts or omissions by the Board, is not in the public interest.

2. The Complainants further ask the Committee to make the following recommendations to the Minister:—

- (A) That amendments are required to the Scheme to provide as follows:—

- (i) Any body of merchants consisting of a majority belonging to an organisation represented on the Joint Committee aggrieved by an act or omission of the Board referable to the marketing handling or processing of wool may refer the matter to the arbitration of a single arbitrator to be agreed upon between the organisation representing the body of merchants and the Board or in default of agreement to be appointed by the Minister on the application of either party and the arbitrator may make such order in the matter as he thinks just. Every such arbitration shall be held in such place in the United Kingdom as the arbitrator may appoint and shall be conducted in accordance with the law of that place.
- (ii) All applications by producers to the Board for permission to change from one authorised merchant to another authorised merchant shall with any reasons in support thereof be communicated by the Board to the merchant from whom the transfer is sought before any such application shall be granted.
- (iii) In the event that any objection to the application for transfer as aforesaid is made in writing to the Board by or on behalf of the merchant from whom the transfer is being sought within 21 days of the receipt from the Board of the notice of application and any reasons in support thereof the application shall be submitted for final determination to a Tribunal to be set up by the Board as hereafter provided.
- (iv) A Tribunal for the purpose of determining applications for transfer by producers in respect of which objection has been made by the merchant from whom the transfer is being sought shall be constituted by the Board as often as may be required and in such places as may be required in the following manner:—
- (a) The Board shall keep for each region two panels of persons willing to serve on the Tribunal. The first panel shall consist of persons nominated by organisations represented on the Joint Committee and the second panel shall consist of persons nominated by the Board.
- (b) A Tribunal shall consist of five persons of whom three shall be appointed by the Board from the panel of persons nominated by the Board and two from the panel of persons nominated by the organisations as aforesaid.

(v) It shall be the duty of a Tribunal to determine such applications as aforesaid in accordance with such conditions as may be prescribed by the Board on the recommendation of the Joint Committee providing always that a producer shall be entitled to change from one merchant to another if he establishes bad service on the part of the merchant from whom he seeks a transfer.

(B) That a Direction be given to the Board in the following terms:—

The terms relating to remuneration contained in the current contract between the Board and merchants belonging to the Complainant organisations shall be reviewed by the Board and the Complainants with effect from the 1st May, 1957, and in the event that no agreement is reached upon such review the matter to be referred to arbitration.

APPENDIX II

Names and Qualifications of Witnesses

ON BEHALF OF THE COMPLAINANTS

Country Wool Merchants Association Witnesses

- | | |
|--------------------------------|--|
| Arthur William Donald McIntyre | Director of the firm of Robert Cook & Co. Ltd., Wool Merchants, Bradford, Liskeard and Launceston; Cornwall. Authorised "A" Merchants.
President of the Country Wool Merchants Association for last two years. Member of the Joint Advisory Committee of the British Wool Marketing Board since 1955. |
| Allan Welch, F.C.A., M.C. ... | Partner in the firm of Boyce Welch & Co., Chartered Accountants, 3, Piccadilly, Bradford, 1, and of Salisbury House, Finsbury Circus, London, E.C.2.
Acted on behalf of the Country Wool Merchants Association in negotiations with the British Wool Marketing Board on cost enquiry. |

Wool Federation of Scotland Witnesses

- | | |
|---------------------------------|--|
| Lanyon Loveridge Scott, B.Sc. | Director of Wm. C. Scott, Ltd., Wool Merchants & Skinners, East Dock Street, Dundee. Authorised "A" Merchants.
Vice-Chairman of the Wool Federation of Scotland 1954-56. Chairman 1956 to date.
Member of the Joint Advisory Committee of the British Wool Marketing Board since 1954. |
| John Kinniburgh Templeton, C.A. | Partner in the firm of Grahams, Rintoul, Hay, Bell & Co., Chartered Accountants, 105, St. Vincent Street, Glasgow, and Old Broad Street, London.
Secretary of the Wool Federation of Scotland since December, 1954.
Secretary of the Committee of Scottish Wool Brokers. |

Other witnesses

- Roy Forbes Harrod Fellow of the British Association. Hon. Dr. (Law) Politics and of Civil Law, Aberdeen. Student of Christ Church since 1924. Joint Editor of Economic Journal. Reader in International Economics. Fellow of Nuffield College. Member of the Council of the Royal Economic Society since 1933. Member of United Nations Sub-Commission on Employment and Economic Stability 1947-50. Economic Adviser to International Monetary Fund 1952-53.
- Benjamin Theodore West Farmer, River Head, Louth. Chairman and Managing Director of Theodore West Ltd., General Agricultural Merchants in Lincs. and Notts. "B" Wool Merchant.

ON BEHALF OF THE BRITISH WOOL MARKETING BOARD

The Board's Witnesses

- Samuel Ramsay Blackley, M.B.E., B.Sc. (Agric.) Post Graduate Diploma in Agricultural Economics, Oxford. Joined the British Wool Marketing Board as Assistant Secretary in 1951, afterwards Secretary and now General Manager and Secretary of Board since 1954.
- Ivor Morris, J.P. Farmer, Tetbury, Glos. Member of the British Wool Marketing Board since 1950. Chairman of the British Wool Marketing Board from 23rd October, 1952, to 28th November, 1957. Member of the Board's Joint Advisory Committee, 1951, and Chairman of Committee since January, 1953.

U.K. Co-operative Wool Federation Witnesses

- George William Tuffrey Secretary and Manager of the Co-operative firm of Kent Wool Growers Ltd. Authorised "A" Merchants of the British Wool Marketing Board. Secretary of Kent and Romney Marsh Sheep Breeders' Association.
- Donald William Cooper, B.Sc. (Agric.) National Diploma in Agriculture. Secretary of the United Kingdom Co-operative Wool Federation, Agriculture House, Knightsbridge, London, S.W.1.

Firms of Merchants viewed by Committee

Name and Address of Firm visited	Type of Firm	Visited by	Accompanied by	
			British Wool Marketing Board representatives	Merchant organisation representatives
British Wool Marketing Board, Oak Mills, Clayton, Bradford, Yorks.	Experimental Handling Unit	Mr. R. O'Sullivan, Q.C., Chairman. Professor R. F. Kahn. Miss W. M. Drake, Secretary.	Mr. E. Brundrett, Member S. Region. Mr. J. Drinkall, Member N.W. Region. Mr. J. E. Scurrah, Finance Officer.	Mr. J. Wilson, Vice-President C.W.M.A. Mr. Menzies, Manager, Wool Warehouses Ltd.
Wool Warehouses Ltd., Stainland, Nr. Halifax, Yorks; subsidiary of H. Dawson & Co. Ltd., Top Makers, Bradford.	Private firm; dual enterprise; Wool Merchants (British and imported wool).	do.	do.	do. Also Mr. H. Dawson, Director of Wool Warehouses Ltd.
Gregory & Prentis Ltd., Ashford, Kent.	Private firm; dual enterprise; English (Kent) Wool Merchants.	Mr. R. O'Sullivan, Q.C., Chairman. Mr. J. Ryan. Miss W. M. Drake, Secretary.	Mr. E. Brundrett, Member S. Region. Mr. C. Schofield, Regional Officer.	Mr. A. W. McIntyre, President C.W.M.A. Mr. Strout, Director, Gregory & Prentis Ltd.
Kent Wool Growers Ltd. ...	Co-operative firm; single enterprise; British Wool Merchants.	do.	do.	Mr. A. W. McIntyre, President C.W.M.A. Mr. G. W. Tuffrey, Secretary and Manager, Kent Wool Growers Ltd. Mr. Buxton, Technical Adviser to Kent Wool Growers Ltd.

F. H. McLeod & Sons, Glasgow	Private firm; dual enterprise; Wool Merchants and Sheepdip business.	Mr. E. W. Craig. Mr. R. A. Fasken, Assistant Secretary.	Mr. S. R. Blackley, Manager and Secretary. Mr. H. C. Falconer, Chairman.	Mr. H. A. Anderson, Ptnr. F. H. McLeod & Sons. Mr. H. Anderson, Ptnr. F. H. McLeod & Sons. Mr. L. L. Scott, Chairman W.F.S. Mr. J. K. Templeton, Secretary, W.F.S.
Scottish, English & Welsh Wool Growers Ltd., Paisley.	Co-operative firm; dual enterprise; Wool Merchants.	do.	do.	Mr. L. L. Scott, Chairman, W.F.S. Mr. J. K. Templeton, Secretary, W.F.S. Mr. D. McLeod, Manager, and Mr. A. W. Bird, Secretary, Scottish, English and Welsh Wool Growers Ltd.
Russell & Ramsden, Pirig, Edinburgh.	Private firm; dual enterprise; Wool Merchants.	do.	do.	Mr. J. K. Templeton, Secretary, W.F.S. Mr. R. N. Pentland, W.F.S. Mr. H. S. Ramsden and Mr. A. Blair (Partners, Russell & Ramsden).
Northern Ireland Wool Co. Ltd., Ravenhill Road, Belfast.	Private firm; single enterprise; Wool Merchants and General Storage business.	Mr. S. A. Boyd. Mr. R. A. Fasken, Assistant Secretary.	Mr. H. W. West, Member, N.I. Region.	Mr. J. Neill, W.F.S. Mr. D. Hennessey, General Manager, Northern Ireland Wool Co. Ltd.
Ulster Wool Growers Ltd., Muckamore, Co. Antrim.	Co-operative firm; dual enterprise; Wool Merchants.	do.	do.	Mr. J. Neill, W.F.S. Mr. W. L. Pullan, General Manager, Ulster Wool Growers Ltd.

TABLE I

BRITISH WOOL MARKETING SCHEME

BRITISH WOOL—PRODUCTION, PRICES AND MARKETING STATISTICS—1950-51 to 1956-57

Source: M.A.F.F.

Clip Year May/April	Production				Sales			Transfer to or from Special Account (c)	Exchequer Special Advances (d)
	Weight of Clip Purchased (a)	Guaranteed Price	Marketing Allowance (b)	Actual Remunera- tion received by Merchants	Value at Guaranteed Price + Marketing Allowance (b)	Weight of Wool Sold (a)	Sums realised at sales	Average Selling Price	
	lb.	pence/lb.	pence/lb.	pence/lb.	£	lb.	£	pence/lb.	£
1950-1	57,861,711	27-05	3-75	2-115	7,425,586	58,024,178	23,697,950	98-02	+14,645,127(c)
1951-2	61,713,590	72-00	3-75	2-696(f)	19,478,352	61,433,284	11,825,807	46-20	7,652,545
1952-3	67,128,975	54-00	3-75	2-724	16,152,910	67,032,417	13,729,476	49-16	2,423,434
1953-4	69,066,006	54-00	4-75	2-721	16,907,003	68,791,582	15,205,178	53-05	1,701,825
1954-5	72,527,074	54-00	4-21	2-735	17,590,841	71,951,839	16,376,122	54-62	1,214,719
1955-6	67,201,106	58-25		2-633(g)	16,310,268	66,965,103	14,526,174	52-06	1,784,094
1956-7	67,636,137	56-25		2-850(h)	15,852,220	67,605,840	15,515,455	55-08	116,534
									220,231

(a) The discrepancies in total figures arise from variations in moisture content while in store, processing, etc.

(b) In respect of the 1950-1, 1951-2, 1952-3 and 1953-4 clips the Government guaranteed the Board fixed Marketing Allowances as shown. In respect of the 1954-5 clip a Marketing Allowance of a maximum of 4-75d. per lb. was guaranteed to the Board, the actual costs were 4-21d. per lb. As from the 1955-6 clip the allowance for marketing costs was consolidated with the guaranteed price.

(c) Transfers from the Special Account total more than the sum shown as transferred to the Account due to the accumulation of interest and other adjustments.

(d) These payments by the Exchequer are a first charge against any future surplus made by the Board.

(e) The surplus on the clip amounted in total to £16,272,364 of which, under the terms of the Financial Agreement, the Board retained 10 per cent, £1,627,237. From this sum the Board made a bonus payment to producers amounting to approximately £1,100,000.

(f) Includes 10 per cent increase in rate of remuneration; certain other changes were made in the remuneration arrangements, which resulted in an apparent increase.

(g) Includes a 10 per cent reduction on previous years' remuneration rate, offset by a retrospective award for cost increases given in 1956-7.

(h) This is the 1955-6 rate plus awards on account of cost increases.

TABLE II

**NUMBER OF MEMBERS IN MERCHANTS' ORGANISATIONS AND
APPROXIMATE WEIGHT OF WOOL HANDLED BY THEM IN
WOOL YEAR 1956-7**

Merchant Organisation	No. of Members	Approx. weight of wool handled on behalf of the Board by members of organisation
		million lbs.
British Wool Federation	52	34.6
Country Wool Merchants Association	48	29.2
Wool Federation of Scotland	24	17.9
United Kingdom Co-operative Wool Federation	6	10.1
Welsh Country Wool Merchants Association ...	9	2.2
(Non-members)	(4)	(0.3)

NOTE: The total number of merchants in 1956 was 113 and the total clip handled was 67.6 million lb. Many merchants are members of more than one organisation which accounts for the overlap in the individual figures.

TABLE III

**BRITISH WOOL MARKETING BOARD
LOCATION OF AGENTS DURING PERIOD 1st MAY, 1956
TO 21st MARCH, 1957**

Region of Board	No. of Contracts allocated to the Board's agents in the Region	1956-7 Weight (million lbs.)
South Western England	13	9.2
Southern England	12	6.3
Central England	17	5.7
Northern England (including Wales Sub-merchants)	46	18.2
Total—England	88	39.3
Total—Wales	13	5.6
Total—Scotland	25	20.0
Total—Northern Ireland	2	2.7
GRAND TOTAL	128	67.6

NOTES:

(1) For the purposes of this table each contract of agency is a unit except where two contracts are in operation in respect of one premises and it is not therefore possible to allocate the weight (there are two such cases), most other agents have one contract each except for a few who have two or more in respect of different centres of operation.

(2) Where a unit covers more than one centre of operation the major centre has been used as a basis.

(3) Totals shown sometimes differ from those obtained by direct addition of components as a result of rounding off.

TABLE IV

BRITISH WOOL MARKETING BOARD
NUMBERS OF REGISTERED PRODUCERS AND AGENTS

Wool year May/April	Total number ⁽¹⁾ of Producers on the books at end of season	Total number of producers delivering wool	Number of Agents		
			No. of Firms	Average weight of wool handled by each firm (lbs.)	No. of Contracts
1945-46 ...	N/A	N/A	148 ⁽²⁾	373,000 ⁽²⁾	N/A
1947-48 ...	N/A	N/A	147 ⁽²⁾	328,000 ⁽²⁾	N/A
1950-51 ...	N/A ⁽²⁾	92,156	128	452,000	140
1951-52 ...	102,366	96,490	127	486,000	138
1952-53 ...	111,425	101,164	126	533,000	137
1953-54 ...	116,016	104,127	125	553,000	137
1954-55 ...	117,332	107,403	120	604,000	134
1955-56 ...	119,641	107,709	119	565,000	134
1956-57 ...	120,304	109,637	113	599,000	128
At 31.8.57 ...	123,345	—	—	—	—

(¹) Any producer who has no wool for three years is advised by the Board that he will be removed from the register unless he requests to be allowed to remain on it within a specified period. This procedure came into force in October, 1954.

(²) No figure is available for the number of producers on the register at the end of the 1950-51 season, as the register was at that time still in the course of preparation.

(³) Pre-Board figures available for comparison.

INTERPRETATION OF THE FIGURES EMERGING FROM THE COST SURVEY AND SUBSEQUENT NEGOTIATIONS

1. As a result of lengthy negotiations between representatives of the Board and the merchant organisations agreement was reached on most of the items of the Cost Survey. The position reached at the time of the Board's final offer on 16th February, 1955, is summarised in the following Table, which sets out the differences reached in the differing interpretations of the Cost Survey results and of the figures behind the offers made.

RECEIPTS:

All figures in pence per lb.

	Average Cost	Survey Figures With adjustment for dagings
Current fees for grading and handling fleece wool and dagings	2·689	2·689
Plus increased allowance for dagings		0·016
		<hr/> 2·705
Plus fee for special services	0·117	0·117
Total	<hr/> 2·806	<hr/> 2·822

OUTGOINGS:

	Board Assessment		Merchant Organisations' Assessment
	Col. 1	Col. 2 <i>Including correction for errors of apportionment</i>	Col. 3
Cost items on which there was no disagreement ...	2·155	2·035	2·155
Add cost items agreed subsequently	0·046*	0·046*	0·046*
Deduct—reduction for in-essential costs	0·117	0·117	0·059
	<hr/> 2·084	<hr/> 1·964	<hr/> 2·142
Allowance for services of proprietors and directors	0·163	0·163	0·375
Profit margin	0·304*	0·424*	0·034*
Proprietors' net income ...	0·467*	0·587*	0·409*
Reduction of 10 per cent. on grading and handling fee	0·271	0·271	0·271
	<hr/> 2·822	<hr/> 2·822	<hr/> 2·822

*NOTE: We were told by one of the complainants' professional witnesses that a lower reduction was subsequently agreed on one other minor item—the allowance for clip variation—which would have had the effect of increasing by 0·007d. to 0·053d. the figure of cost items subsequently agreed and lowering the figures for profit and proprietors' net income by a similar amount.

2. From this Table it can be seen that there were two cost items on which no agreement had been reached in mid-February, 1955. These were the major items, i.e. the reduction on account of inessential costs and the allowance for the services of proprietors and directors. In addition the private merchant organisations were seeking an increase to 0.75d. per lb. in the profit margin, and they had opposed the Board's contention that there had been errors in the apportionment of costs of dual firms requiring a correction in the average costs as shown in Column 2 of the above Table.

3. It should also be noted that the Board did not present to merchant organisations any calculation, as in the end of the Table, to show the effect on merchants' net income or on their profit margin, of a 10 per cent. reduction in the current grading and handling fee plus an increased allowance for daggings. Nor did the Board demonstrate the effect of such a reduction on the margins of the individual firms which had taken part in the Cost Survey, although they had the material available to do this. We ourselves have attempted a rough estimate on the basis of the material put in to us in evidence by the Board's Manager/Secretary. This assessment cannot be regarded as more than a general indication of the effects of the reduction. On this basis, on either assessment about one-sixth of the firms would have received no proprietors' net income; on the Board's assessment about one-fifth of the firms would have received no profit but on the complainants' assessment between two-fifths and a half would have received no profit, the difference being due to the much larger figure claimed by the complainants for remuneration of proprietors and directors.

4. *Errors in apportionment.* The possibility of errors having been made in the apportionment of costs was first raised by the Board in their memorandum of September, 1954, and featured prominently in the later discussions. The Board maintained that, after allowing for differences in respect of a number of other relevant factors, the Cost Survey had shown that there remained an inexplicable difference in the profit margins between dual wool firms and other firms. They contended that this difference might have been due either to inefficiency or to errors involving a definite bias in apportionment by dual wool firms, and they favoured the latter explanation. The complainant organisations did not accept the argument that there had been such errors in apportionment for dual wool firms; and they pointed to other factors, principally maladjustments in the remuneration schedules, which caused disproportionate differences in income not evenly balanced against costs as being the likely cause of the difference in margins between dual wool firms and other firms. The Board, however, did not consider that the remuneration schedules were inaccurate to the extent required by the complainants' argument, and they maintained that this was confirmed by failure on the part of the merchant organisations to agree on any changes to be made to the schedules.⁽¹⁾ The Board claimed an adjustment on account of errors of apportionment which amounted to 0.12d. per lb. on the clip covered in the costing.

5. *Allowance for sub-agents.* The difference over this item concerned the proportion of figures returned under the Cost Survey which should not be allowed because of the inclusion of inessential costs in the form of payments to sub-agents. Part of these payments was, in the Board's view, to be attributed to compensation for pre-war goodwill. The complainant organisations were prepared to concede, in an attempt to compromise, a reduction of not more than one-third, while the Board maintained that a two-thirds reduction was justified. The difference between the two sides amounted to one-third of the total sum of only about £21,000 paid to sub-agents by all the costed firms, representing 0.059d. per lb. on the sample as a whole.

⁽¹⁾ We understand in fact that the failure of the merchants to propose alterations to the remuneration schedules was not so much that they did not consider that alterations were required, but because of the difficulty of altering them without prejudicing some merchants in favour of others.

6. *Proprietors' remuneration and profit.* The question whether the remuneration of proprietors and directors, as something apart from profit, should be treated as a cost item was raised by the Board early in December, 1954. The Board considered that the item could not be properly assessed from the Cost Survey results, which in this respect showed a marked inconsistency between firms. They had therefore claimed that it should be included with profit under the heading of proprietors' average net income. The complainant organisations maintained that this was decided unilaterally by the Board and was contrary to the arrangements previously agreed and to normal costing practice.

7. At the meeting on 16th February, 1955, however, the Board did suggest an empirical scale for proprietors' remuneration, giving the average figure of 0.163d. per lb. over the whole sample. The complainant organisations claimed that their figure of 0.375d. was justified by the Cost Survey results.

8. The complainant organisations also claimed a separate profit margin of 0.75d. per lb. They had advanced this figure at the meeting on 19th January, 1955, when they had set out their case for an increase of some 20 to 25 per cent. on the existing rates of remuneration. It was made clear to us in evidence on behalf of the complainant organisations that they regarded 0.60d. per lb. as a minimum figure and that this part of their remuneration was mainly a reward for the merchants' specialised knowledge but also covered other items not rewarded under the heading of costs. The Board did not accept the claim for a profit allowance of 0.75d. per lb. and argued that the existing scales of remuneration provided a reasonable return to the ordinary run of merchants and an extremely good return to a large number. On their assessment, after a correction for errors of apportionment and a reduction for unnecessary payments to sub-agents had both been made, at the current rates the profit margin amounted overall to 0.695d. per lb., which the 10 per cent. reduction would have reduced to 0.424d. per lb. If the figure of 0.695d. was added to the overall rate of 0.163d. per lb. for services of proprietors and directors, proprietors' net remuneration amounted to 0.858d. per lb. and the Board contended that a reduction was justified.

